

United States
Circuit Court of Appeals
For the Ninth Circuit.

DEXTER HORTON TRUST & SAVINGS BANK,
Appellant,

VS.

THE COUNTY OF CLEARWATER of the State
of Idaho, and OREN D. CROCKETT, as Trea-
surer of said County, Appellees.

Transcript of the Record

VOL. 1—Pages 1 to 478 Inc.

Filed

APR 5 - 1917

F. D. Monckton,
Clerk.

*Upon Appeal from the United States District Court,
District of Idaho, Central Division.*

United States
Circuit Court of Appeals
For the Ninth Circuit.

DEXTER HORTON TRUST & SAVINGS BANK,
Appellant,

vs.

THE COUNTY OF CLEARWATER of the State
of Idaho, and OREN D. CROCKETT, as
Treasurer of Said County,
Appellees.

Transcript of Record.

Upon Appeal from the United States District Court,
District of Idaho, Central Division.

INDEX.

	Page
Amendment to Answer.....	150
Amendment to Answer.....	153
Amendment and Supplemental to Plaintiff's Reply.....	169
Answer	19
Appeal Bond	787
Assignment of Errors.....	764
Bill in Equity.....	7
Citation (Original)	793
Clerk's Certificate	795
Copy of Minutes of Board of County Commis- sioners dated Mar. 21, 1916.....	243
Copy of Minutes of Board of County Commis- sioners dated Mar. 28, 1916.....	242
Correction of Statement of Facts.....	207
Decision	173
Decree	209
Motion for Injunction.....	18
Notice of Lodgment of Statement of Evidence..	211
Notice of Time for Approval of Statement of Evidence	216
Order Allowing Appeal.....	786
Order Approving Statement of Evidence.....	476
Order Giving Plaintiff to January 1, 1917, to Lodge Statement of Evidence.....	210
Order to Transmit Original Exhibits.....	789
Original Praecept.....	790
Petition for Appeal.....	763

Index.	Page
Reply to Separate and Special Defense and Counter-claim	154
Return to Record.....	795
Second Supplemental Praecept.....	792
Supplemental Praecept	792
Stipulation Extending Time to File Praecept..	478
Stipulation Extending Time to Lodge Statement of Evidence	209
Stipulation Extending Time to Settle State- ment of Evidence	212
Stipulation for Correction of Statement of Evi- dence.....	213
Statement of Evidence	217

INDEX TO STATEMENT OF THE EVIDENCE.

	Page
PLAINTIFF'S CASE IN CHIEF.	
Witnesses.	
MacMICHAEL, RALPH H.—Direct.....	219
NEASE, M. G.—Direct.....	224
CROCKETT, OREN D.—Direct.....	225
DEFENDANTS' CASE IN CHIEF.	
Witnesses.	
CROCKETT, OREN D.—Direct.....	225
SHREVE, FRANK—Direct.....	227
Cross-examination	232
PORTFORS, CHARLES (Deposition)—	
Direct.....	233
Cross-examination	238
Redirect Examination	239
Recross-examination.....	240
Further Redirect Examination	240
NEASE, M. G.—Direct.....	244
Recalled—Direct	323
Cross-examination	336
Redirect Examination	347
Recross-examination	351
Recalled	396
RANDOLPH, EDWARD—Direct.....	247
Cross-examination	249
Redirect Examination	251
Recross-examination	252
Further Redirect Examination.....	254
Further Recross-examination.....	254
Further Redirect Examination	255
Further Recross-examination	255

	Index.	Page
DEFENDANTS' CASE IN CHIEF. Wit-		
nesses—Continued.		
Further Redirect Examination		255
WHERRY, ROY—Direct.....		256
Cross-examination		267
Redirect Examination		270
Recross-examination		272
Further Redirect Examination		272
Recalled—Direct		371
Cross-examination		372
Redirect Examination		372
SMALL, MELVILLE—Direct		273
SWANSON, JOHN—Direct		273
Cross-examination		276
Redirect Examination		276
Recross-examination		276
BAILEY, FRED—Direct		277
Cross-examination		277
MORROW, JAMES—Direct		278
Cross-examination		285
BECKER, JOHN R.—Direct.....		287
Cross-examination		290
Redirect Examination		290
Recross-examination		291
Further Cross-examination		396
BUSH, BENJ. E.—Direct		291
Cross-examination		292
Redirect Examination		294
HARRISON, FRANK—Direct		294
Cross-examination		301
Redirect Examination		308

	Index.	Page
DEFENDANTS' CASE IN CHIEF. Wit-		
nesses—Continued.		
Recross-examination		309
Further Redirect Examination		310
Further Recross-examination		312
Further Redirect Examination		312
SNYDER, SAMPSON (Deposition)—		
Direct		312
SMALL, ELLIS (Deposition)—Direct...		314
Cross-examination		315
Redirect Examination		315
FOHL, THEODORE (Deposition)—Direct.		315
Cross-examination		317
LEWIS, JOHN—Direct		318
Cross-examination		319
Redirect Examination		320
HARLAN, JOHN P.—Direct.....		320
Recalled—Direct		371
Cross-examination		371
MURRAY, JOHN C.—Direct		321
Recalled—Direct		372
Cross-examination		377
Redirect Examination		382
Recross-examination		383
Examination by Court.....		384
Further Recross-examination		385
Further Redirect Examination		385
Further Recross-examination		386
Further Redirect Examination		387
ZELENKA, FRANK—Direct		352
Cross-examination		357

	Index.	Page
DEFENDANTS' CASE IN CHIEF. Wit-		
nesses—Continued.		
Redirect Examination		362
Recross-examination		364
Further Redirect Examination		364
Further Recross-examination		364
ALBRIGHT, L. E.—Direct.....		365
Cross-examination		370
Redirect Examination		370
LEIGHTON, H. M.—Direct		387
Cross-examination		390
Redirect Examination		391
Recross-examination		393
MALLOY, JOHN—Direct		394
Cross-examination		395
Redirect Examination		395
PLAINTIFF'S REBUTTAL.		
TORGESON, EMIL—Direct		398
Cross-examination		400
Redirect Examination		401
HARRISON, FRANK—Direct		402
Cross-examination		403
HOAR, BLAIR E.—Direct.....		403
Cross-examination		404
Redirect Examination		404
Recross-examination		405
Further Redirect Examination		407
GORMAN, JOHN F.—Direct		407
Cross-examination		409
Redirect Examination		413

Index.	Page
PLAINTIFF'S REBUTTAL—Continued.	
BLAKE, P. H.—Direct.....	413
Cross-examination	419
Redirect Examination	424
Recross-examination	425
CONRY, C. M.—Direct.....	425
Cross-examination	429
Redirect Examination	431
HAMER, A.—Direct	431
Cross-examination	436
Redirect Examination	438
Recross-examination	440
CLARK, LESTER—Direct	440
Cross-examination	442
Redirect Examination	442
Recross-examination	443
PENEGOR, GEORGE—Direct	443
Cross-examination	444
Redirect Examination	447
CROMAN, J. E.—Direct	448
Cross-examination	449
MILLER, JOHN—Direct.....	451
Cross-examination	454
SNYDER, C. S.—Direct	457
Cross-examination	457
HART, CHARLES R.—Direct	458
Cross-examination	458
KELLEY, BERNARD—Direct	459
Cross-examination	459
OLINGER, L. W.—Direct	459
Cross-examination	460

Index.	Page
PLAINTIFF'S REBUTTAL—Continued.	
Redirect Examination	461
Recross-examination	461
JOHNSON, W. H.—Direct	461
Cross-examination	462
LODS, F. J.—Direct	463
BENNISON, F. B.—Direct	463
Cross-examination	463
BECKETT, HARRY B.—Direct	463
TANNAHILL, GEORGE W.—Direct.....	464
Cross-examination	465
RANDOLPH, ED.—Direct	466
Cross-examination	466
Redirect Examination	467
DOCKERY, W. M.—Direct	467
Cross-examination	468
NEASE, M. C.—Direct.....	469
Cross-examination	474
DEFENDANTS' REBUTTAL.	
BECKER, JOHN R.—Direct	474
SWANSON, JOHN—Direct	475
Cross-examination	475
Redirect Examination	475

PLAINTIFF'S EXHIBITS.

Number	Description	Found at	Received
		Page	in Evidence Page
1	Warrants	592	220
2	Warrants	594-5	221
3	Copy of Commissioners' Pro- ceedings Entering into Con- tract With Nease.....	479	223
4	Copy of Commissioners' Pro- ceedings, Oct. 15, 1914, Al- lowing Nease's Claim.....	495	223
5	Copy of Commissioners' Pro- ceedings, Nov. 7, 1914, Allow- ing Nease's Claim.....	506	223
6	Copy of Commissioners' Pro- ceedings, Oct. 15, 1914, Allow- ing Nease's Claim.....	520	223
7	Copy of Commissioners' Pro- ceedings, Dec. 8, 1914, Allow- ing Nease's Claim.....	529	224
8	Copy of Commissioners' Pro- ceedings, Oct. 14, Dec. 7, Dec. 8, 1914, Allowing Nease's Claim	548	225
10	Letter, Nease to Randolph, Apr. 4, 1914	551	252
11	Letter, Wherry to Laughlin of April 30, 1916.....	552	268
12	Letter, Wherry to Leighton of April 4, 1916.....	554	268
13	Letter, Wherry to Leighton of March 27, 1916.....	556	268
14	Letter, Nease to Wherry of September 28, 1914	557	269

x *Dexter Horton Trust & Savings Bank vs.*

Number	Description	Found at Page	Received in Evidence Page
15	Letter, Wherry to Nease of Oc- tober 4, 1914	558	269
16	Letter, from Co. Commrs. to Nease	560	342
17	Letter, from Zelenka to Nease of March 13, 1914.....	560	344
18	Letter, Nease to Harrison of March 27, 1914	561	345
19	Letter, Nease to Zelenka of March 27, 1914	562	345
20	Telegram, Nease to Blake, March 19, 1914	563	345
21	Telegram, Nease to Harrison, Apr. 3, 1914	563	345
22	Letter, Blake to Nease, March 19, 1914	564	345
23	Telegram, Nease to Blake, April 3, 1914	565	345
24	Telegram, Potlatch Lumber Co. to Nease, April 22, 1914.....	565	346
25	Letters and Affidavits Procured by Commissioners, With Ref- erence to Nease's Qualifica- tions	566	359
27	38 Maps of U. S. Land Office Showing Status of Govern- ment Lands.....(Not Printed)		404
28	Certificate Showing Status of State Lands Cruised	583	407
29	Letter, Judge Steel to Babb, of July 6, 1914	591	465

DEFENDANTS' EXHIBITS.

Number	Description	Found at Page	Received in Evidence Page
3	Archie Young's Report on Sec. 4, T. 39 N., R. 3 E. .....(Not Printed)		244-246
4	Wherry and Swanson's Com- parative Cruise, Sec. 34, T. 35 N., R. 5 E.....	596	263; 274
5	Wherry and Swanson's Com- parative Cruise, in T. 37 and 39	624	265; 273
6	Nease Report to County, of Lands Cruised by Wherry and Swanson ....(Not Printed)		279
7	Cruise of James Morrow..... .....(Not Printed)		279
8	Nease's Report to County on Secs. 15, 23 and 26, T. 35 N., R. 4 E.....(Not Printed)		279
9	Nease's Report to County on Secs. 31, 32, 33, T. 40 N., R. 2 E.....(Not Printed)		280
10	Nease's Report to County on Secs. 2, 12 and 27, T. 39 N., R. 4 E.....(Not Printed)		280
11	Topographic Sketch of Wherry & Nease of Sec. 6, T. 38 N., R. 6 E.....(Not Printed)		280

xii *Dexter Horton Trust & Savings Bank vs.*

Number	Description	Found at Page	Received in Evidence Page
12	Nease's Report to County on Sec. 34, T. 35 N., R. 5 E. .... .....(Not Printed)		280
13	Nease's Report to County on Sec. 13, T. 37 N., R. 5 E. .... .....(Not Printed)		280
14	Nease's Report to County on Sec. 26, T. 37 N., R. 5 E. .....(Not Printed)		281
15	Nease's Report to County on Sec. 35, T. 37 N., R. 5 E. .....(Not Printed)		281
16	Nease's Report to County on Sec. 24, T. 39 N., R. 5 E. .....(Not Printed)		281
17	Nease's Report to County on Sec. 25, T. 39 N., R. 5 E. .....(Not Printed)		281
18	Morrow's Comparative Cruise..	632	285; 393
19	Tabulation of Witness Becker..	644	289
20	38 Plats of U. S. Land Office .....(Not Printed)		289-290
20(a)	Plat of T. 36 N., R. 4 E .....(Not Printed)		393-394
21	Complaint of John Lewis.....	648	312
23	Plat of T. 38 N., R. 7 E. .....(Not Printed)		324
24	Plat of T. 38 N., R. 3 E. .....(Not Printed)		326

Number	Description	Found at Page	Received in Evidence Page
25	Telegram, Nease to Laird, Sept. 8, 1914	663	328
26	Telegram, Laird to Nease, Sept. 8, 1914	663	329
27	Letter, Humiston to Nease Tim- ber Company, 7/21/14.....	664	329
28	Telegram, Humiston to Nease, May 10, 1914	665	329
29	Telegram, Nease to Potlatch Lumber Co., March 3, 1914...	665	329
30	Telegram, Nease to Humiston, Oct. 27, 1914.....	666	329
31	Telegram, Nease to Humiston, Oct. 28, 1914	666	329
32	Warrant Sold to Empire Na- tional Bank	667	330
33	Statement of Amounts Paid by Nease to Cruisers and Com- passmen	669	331
34	Statement Showing Land Owned by Potlatch Lumber Com- pany	675	336
35	Albright's Field Book..... (Not Printed)		368
36	Albright's Photograph of S. W. 1/4 of S. W. 1/4, Sec. 13, T. 37 N., R. 5 E..... (Not Printed)		369
37	Plat Showing Gorman's Esti- mate		371

xiv *Dexter Horton Trust & Savings Bank vs.*

Number	Description	Found at Page	Received in Evidence Page
38	Plat of T. 39 N., R. 4 E.		
	..... (Not Printed)		374
39	Plat of T. 38 N., R. 3 E.		
	..... (Not Printed)		395
40	Statement of State Land Com- missioner, Showing State Lands Sold Under Contract..	751	476
41	Expense Account of J. F. Gor- man	759	476

TRIAL STIPULATIONS AS TO AMENDMENTS.

	Page
Amendment of Answer	219
Amendment of Reply	219
Amendments to Answer and Reply.....	278

TRIAL STIPULATIONS AS TO FACTS.

Signatures to Warrants	221
Registration of Warrants	221
Copy of Warrants in Lieu of Originals....	220-221
Notice of Commissioners' Meeting, Feb. 24, 1914	241
Minutes of Commissioners' Meeting, Feb. 24, 1914	241
Minutes of Commissioners' Meeting, March 21, 1914	241-243
Minutes of Commissioners' Meeting, March 28, 1914	241-242
Minutes of Commissioners' Meeting, Apr. 14 and 15, 1914.....	241
Minutes of Commissioners' Meeting, June 6, 1914	241
Publication of Proceedings of Commission- ers' Meeting of October 15, Nov. 7, Dec. 8, 1914	241-242

Names and Addresses of Counsel.

Plaintiff's Counsel:

PETERS & POWELL,

546 New York Block, Seattle, Wash.

W. A. PETERS,

546 New York Block, Seattle, Wash.

JOHN H. POWELL,

546 New York Block, Seattle, Wash.

GEORGE W. TANNAHILL,

Lewiston, Idaho.

H. B. BECKETT,

Board of Trade Bldg., Portland, Ore.

Defendants' Counsel:

FRED E. BUTLER,

Lewiston, Idaho.

*In the District Court of the United States for the
District of Idaho, Central Division.*

DEXTER HORTON TRUST & SAVINGS BANK,
a corporation of the State of Washington,
Plaintiff,

vs.

THE COUNTY OF CLEARWATER of the State
of Idaho and Oren D. Crockett, as treasurer of
said county, Defendants.

No. 639.

BILL IN EQUITY.

*To the Honorable Judge of the District Court of the
United States for the District of Idaho, Central
Division:*

Dexter Horton Trust & Savings Bank, a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Seattle in said State of Washington, and a resident of said State of Washington, brings this its bill against the county of Clearwater, of the State of Idaho, and Oren D. Crockett, as treasurer of said county, a resident of said State of Idaho, and said Clearwater county, and in the Central division of the district of Idaho, and for its cause of action the plaintiff states:

I.

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the

State of Washington, with its principal place of business in the city of Seattle, and in the county of King, in said State, and that it is a resident of said State of Washington, and that during all the times hereinafter stated it was and it is now engaged in carrying on a general banking and trust business in said city of Seattle.

II.

That during all the times hereinafter stated the defendant Clearwater County was and it is now a county of the State of Idaho situated in the Central division of the district of Idaho and duly organized and existing as such county under the laws of the State of Idaho. That the defendant Oren D. Crockett is now the duly elected and qualified and acting treasurer of said Clearwater county with the powers vested in him and the duties and obligations imposed upon him as such treasurer by the laws of the State of Idaho, and a resident and citizen of the State of Idaho.

III.

That heretofore, to-wit, on the 7th day of November, 1914, and prior thereto, the defendant, the county of Clearwater, was legally indebted to one M. G. Nease in the just and full sum of Ten Thousand Four Hundred Twenty and 83/100 Dollars; that on said 7th day of November, 1914, the said county of Clearwater duly executed, issued and delivered at the city of Orofino in said county, to the said M. G. Nease warrants of said county, fifty-three in number, and

numbered 7308 to 7360, both numbers inclusive, payable out of the current expense fund of said county, to the order of the said M. G. Nease and for the aggregate amount of said Ten Thousand Four Hundred Twenty and 83/100 Dollars; that each and all of said warrants were signed by the then county auditor of said county by and under the authority of the then board of county commissioners of said county and were delivered by the said auditor by and under the authority of said board of county commissioners to the said M. G. Nease for and in payment of the aforesaid indebtedness then due by the said county of Clearwater to the said M. G. Nease, and theretofore duly allowed by said board.

IV.

That thereafter on the 7th day of November, 1914, the said M. G. Nease presented each and all of said warrants for payment to the county treasurer of said county, but the payment of each and all of the same was by the said treasurer refused for want of funds applicable to the payment thereof, and the said treasurer did thereupon on said day duly register each and all of said warrants.

V.

That heretofore, to-wit, on the 8th day of December, 1914, and prior thereto, the defendant the county of Clearwater was legally indebted to one M. G. Nease in the just and full sum of Thirty-three Thousand Six Hundred Fifty-one and 86/100 Dollars; that on said 8th day of December, 1914, the said

county of Clearwater duly executed, issued and delivered at the city of Orofino in said county, to the said M. G. Nease, warrants of said county, seventy-one in number, and numbered 7543 to 7713, both numbers inclusive, payable out of the current expense fund of said county, to the order of the said M. G. Nease, and for the aggregate amount of said Thirty-three Thousand Six Hundred Fifty-one and 86/100 Dollars; that each and all of said warrants were signed by the then county auditor of said county by and under the authority of the then board of county commissioners of said county and were delivered by the said auditor by and under the authority of said board of county commissioners to the said M. G. Nease for and in payment of the aforesaid indebtedness then due by the said county of Clearwater to the said M. G. Nease, and theretofore duly allowed by said board.

VI.

That thereafter on the 8th day of December, 1914, the said M. G. Nease presented each and all of said last mentioned warrants for payment to the then county treasurer of said county, but the payment of each and all of the same was by said treasurer refused for want of funds applicable to the payment thereof and the said treasurer did thereupon on said day register each and all of said warrants.

VII.

That at the time of the issuance and delivery of said warrants and each and every thereof, the said

M. G. Nease was and has at all times since been and is now a resident of the State of Oregon and was not at any of said times or at all a resident or citizen of the State of Idaho.

VIII.

That on or about the 8th day of July, 1915, this plaintiff purchased all of the aforesaid warrants and paid full value therefor and is now the owner and holder of each and every of the same and of the debt evidenced thereby against the said county of Clearwater.

IX.

That each and every of said warrants was, prior to the purchase of the same by this plaintiff, and the delivery of the same to this plaintiff, duly indorsed in writing by the said M. G. Nease and the full title to each and every of said warrants and the full and complete beneficial ownership in each and every thereof is now held, owned and possessed by this plaintiff.

X.

That the current expense fund of the said defendant county for the year 1914 was insufficient to pay any of said warrants and none of the same has been paid either in whole or in part and each and every of the same still remains wholly unpaid.

XI.

That under the law of the State of Idaho all warrants issued by any county for any current fiscal

year payable out of the current expense fund of said county that are not paid out of the current expense fund produced by the tax levy for that purpose for that year are thereafter payable only out of the warrant redemption fund of such county, and all of the aforesaid warrants are now payable out of the warrant redemption fund of the defendant county.

XII.

That there was levied by the said defendant county taxes for the year 1914 for the purpose of raising money for said warrant redemption fund at the rate of eight mills for each and every dollar of taxable property within said county, the total valuation of which for said levy was approximately Nine Millions of Dollars, and the said taxes when paid will produce not to exceed Seventy-two Thousand Dollars, which, together with all the funds which will come into said warrant redemption fund from other sources will make the amount of said warrant redemption fund available for the payment of the outstanding warrants of said county which are by law payable from said fund, wholly insufficient to pay all of said outstanding warrants; that the amount of such outstanding warrants payable from said fund will exceed the amount of said fund available therefor by the amount of Fifty Thousand Dollars at least.

XIII.

That by the law of the State of Idaho warrants which are payable out of the warrant redemption fund of said defendant county are payable in the or-

der and not otherwise in which they have in order of time been registered by the treasurer of said county, and the said county treasurer is by law required to call for payment and pay all outstanding warrants payable out of said fund in such order and not otherwise to the end that each and every of such warrants shall be so called for payment and paid by such treasurer before any other warrant payable out of said fund but registered at a later date shall be paid.

XIV.

That the amount of warrants of the defendant county now outstanding and payable out of said warrant redemption fund is approximately Seventy-three Thousand Dollars exclusive of and in addition to the amount of the warrants now held by this plaintiff as aforesaid; that all of said warrants so aggregating said Seventy-three Thousand Dollars in amount, are now held and owned by various parties other than this plaintiff and to this plaintiff unknown. That none of said last mentioned warrants were registered prior to, but all were registered subsequent, to the registration as aforesaid of the aforesaid warrants now held by this plaintiff, except current expense warrants numbered 7274 to 7307 inclusive and general road warrants numbers 1495 to 1991 both inclusive, aggregating in all the sum of Eighteen Thousand Seven Hundred Forty and 52/100 Dollars, which were registered prior to plaintiff's said warrants; that certain other of said warrants now outstanding and payable out of said warrant redemption fund

and now held and owned by parties other than this plaintiff, to-wit, warrant numbered 7361 to 7542, while registered subsequent to the plaintiff's said warrants bearing date November 7, 1914, were all registered prior to plaintiff's said warrants bearing date December 8, 1914, save and except as above stated, none of said warrants held by other parties other than this plaintiff and amounting to approximately Seventy-three Thousand Dollars as aforesaid, was registered by the treasurer of the defendant county prior to the registration of any of plaintiff's said warrants and each and all of plaintiff's said warrants are payable out of said warrant redemption fund of the defendant county before any of such other outstanding warrants shall be paid, with the exception above stated, and plaintiff is now entitled to have the same so paid.

XV.

That each and every of plaintiff's said warrants bear interest at the rate of seven per cent per annum from the date when the same were respectively registered as aforesaid, and no part of said interest upon any of said warrants has been paid.

XVI.

That the collection of the taxes levied by the defendant county for the purpose of procuring moneys for said warrant redemption fund began on the 4th Monday in November of the year 1915 and a large amount of said taxes have already been paid to the said treasurer and all of the same which shall not

have been paid on or before the first Monday in January, 1916, will on said date become delinquent.

XVII.

That immediately after the first Monday in January, 1916, the said treasurer will call for payment and pay out of said warrant redemption fund all warrants of the defendant county then and now outstanding against said fund and unpaid, excepting only the said warrants of this plaintiff.

XVIII.

That said treasurer has threatened and declared and still threatens and declares that he will pay out of said fund all warrants now outstanding against said fund and now held and owned by parties other than this plaintiff as aforesaid before the payment of any of the warrants now held and owned by this plaintiff as aforesaid, all in plain violation of the right of this plaintiff to have each of said warrants paid before any other warrant against said fund and subsequently registered shall be paid; that the said defendant treasurer will fully carry out his said threats unless he shall be restrained and enjoined from so doing by the judgment and order of this court and he will thereby entirely deplete all of said funds and will leave no moneys whatsoever in said fund for the payment of any of plaintiff's said warrants; that the said threatened action of the said defendant treasurer is wholly unlawful and in violation of plaintiff's rights as aforesaid, and this plaintiff has no adequate remedy at law for any of the wrongs herein complained of and threatened.

XIX.

That unless the said defendant treasurer shall be restrained and enjoined by the judgment and order of this court he will pay out all of said fund applicable to the plaintiff's said warrants as aforesaid upon warrants other than any of the warrants of the plaintiff before a trial of this cause can be had and it is necessary in order to preserve and protect the rights of this plaintiff during the pendency of this action and until a final trial and determination thereof that a temporary injunction issue herein enjoining and restraining all of the defendants herein, and especially the defendant treasurer, from paying any warrants of said defendant county drawn against said warrant redemption fund while there shall be then outstanding any of plaintiff's said warrants of prior registration.

WHEREFORE, plaintiff prays that pending the final determination of this cause a preliminary injunction issue herein restraining the defendants, and especially the defendant Oren D. Crockett as treasurer of the defendant county, from paying out of the warrant redemption fund of said county any warrants drawn by said county and payable out of said fund while there shall remain outstanding and unpaid any of plaintiff's said warrants of prior registration, and that upon the final hearing and determination of this cause the defendants, and especially said defendant Oren D. Crockett as treasurer of said defendant county, be, by the judgment and decree of this court, forever and perpetually en-

joined from making any such payment, and that the said defendants, and especially said defendant treasurer, be, by said judgment and decree, by mandatory injunction embodied therein, required to call and pay out of said fund all of the outstanding warrants of said county drawn against and payable out of said fund, including the said warrants of this plaintiff, in the order, and not otherwise, in which the same and all of the same were in point of time registered by said treasurer.

And to the end that this plaintiff may obtain the relief to which it is justly entitled in this cause, it now prays this honorable court to grant it due process by subpoena directed to the said county of Clearwater and to the said Oren D. Crockett, defendants hereinbefore named, requiring and commanding each of them to appear herein and answer (but not under oath, answer under oath being expressly waived) the several allegations in this bill of the plaintiff.

And for such other and proper relief as to the court may seem meet and proper in the premises.

DEXTER HORTON TRUST & SAVINGS BANK,

By W. H. Parsons, V. P.

PETERS & POWELL,

MARION EDWARDS,

GEO. W. TANNAHILL,

Solicitors for Complainant.

(Duly verified.)

Endorsed: Filed Dec. 27, 1915.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

MOTION FOR INJUNCTION.

Comes now the plaintiff and moves the court that a temporary injunction be issued herein by this court enjoining and restraining each of the defendants herein, and especially the defendant Oren D. Crockett, as treasurer of the County of Clearwater of the State of Idaho, until the final determination of this cause, from paying out of the warrant redemption fund of said county any warrants drawn by said county and payable out of said fund while there shall remain outstanding and unpaid any of the warrants now held by this plaintiff as set forth in its bill of complaint on file herein. This motion is based upon the bill of complaint herein.

GEO. W. TANNAHILL,
PETERS & POWELL,
MARION EDWARDS,
Attorneys for Plaintiff.

To the above named defendants, and each of them:

You, and each of you, are hereby notified that we shall bring the above motion on for hearing before the above entitled court at 10 o'clock A. M. on the 20th day of December, 1915, at the court room thereof, at Boise.

PETERS & POWELL,
MARION EDWARDS,
Attorneys for Plaintiff.

Endorsed: Filed Dec. 27, 1915.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

ANSWER.

Now comes the defendants above named, and for answer to plaintiff's bill of complaint herein, deny, admit and allege as follows:

1.

Deny that on the 7th day of November, 1914, or prior thereto, or at any other time or at all, the defendant, the County of Clearwater, was legally or otherwise indebted to M. G. Nease or any other person in just or full sum of \$10,420.83, or any other sum or at all.

2.

Admit that there was delivered to M. G. Nease 53 pieces of paper purporting to be warrants of Clearwater County, numbered from 7308 to 7360, both inclusive.

These defendants deny that the said board of County Commissioners of said Clearwater County had any authority to issue said warrants to the said M. G. Nease in payment of any indebtedness due from said Clearwater County to the said M. G. Nease; and deny that the said Clearwater County was indebted to the said M. G. Nease in any sum whatever.

3.

Admit that the County Treasurer of said county registered said warrants, but deny that the said County Treasurer or any other person had any authority to register said warrants or any of them.

4.

Deny that on the 8th day of December, 1914, or prior thereto, or at any other time or at all, the defendant, the County of Clearwater, was legally or otherwise indebted to one M. G. Nease, or to any other person in the just or full sum of \$33,651.86, or in any other sum or at all.

5.

Admit that some person, purporting to be an officer of Clearwater County, issued to M. G. Nease 71 pieces of paper, numbered from 7543 to 7713, both inclusive, purporting to be warrants for the aggregate amount of \$33,651.86, but deny that any of said pieces of paper were legal obligations of Clearwater County, and deny that each or any of said purported warrants were signed under the authority of the board of County Commissioners of said county, and deny that the Board of County Commissioners ever had any authority to either execute, issue or deliver the said purported warrants, and deny that the said auditor of Clearwater County had any authority to either issue or deliver any of said purported warrants to the said M. G. Nease for any purpose whatever.

Deny that the Board of County Commissioners had any authority to allow the delivery of said purported warrants to the said M. G. Nease.

Admit that the County Treasurer of said Clearwater County attempted to register said purported warrants, but deny that said County Treasurer or any person had any authority at all to register said purported warrants.

6.

Admit that at the time of the issuance and delivery of said purported warrants, and at all times mentioned in plaintiff's bill of complaint, that the said M. G. Nease has been and now is a resident of the State of Oregon; and admit that the said M. G. Nease has at no time been a resident of the State of Idaho.

7.

That as to whether or not on or about the . . . day of, 1915, the plaintiff herein purchased all or any of the aforesaid purported warrants and paid full or any value therefor; and that as to whether or not it is now the owner or holder of each and every of said purported warrants or of any alleged debt against Clearwater County, these answering defendants have no information sufficient to form a belief and therefore deny said allegation and place the denial upon that ground.

8.

That as to whether or not each or any of the purported warrants referred to in plaintiff's bill of complaint were, prior to the purported purchase of the same, by the plaintiff herein duly or otherwise indorsed in writing by the said M. G. Nease, these answering defendants have no knowledge or information and therefore deny said allegation and place their denial upon that ground.

9.

These answering defendants further deny that plaintiff herein has the full or any title to each or any

of said purported warrants; and deny that the said plaintiff has the full or complete or any beneficial ownership in each or any of said purported warrants referred to and described in plaintiff's bill of complaint.

10.

Admits that the current expense fund of the said defendant Clearwater County for the year 1914, was insufficient to pay any of said warrants; and admits that none of said warrants have been paid, either in whole or in part, and admits that each and every of the same still remain wholly unpaid.

11.

Deny that all or any of the warrants referred to in plaintiff's bill of complaint are now or ever have been payable out of the defendant's warrant redemption fund of Clearwater County.

12.

Deny that any purported warrants alleged to be owned by plaintiff herein are payable out of said or any warrant redemption fund of Clearwater County at any time; deny that the plaintiff is entitled to have the same or any part thereof paid; deny that each and every or any of plaintiff's purported warrants bear interest at the rate of seven per cent per annum, or bear interest at any rate, or otherwise or at all, from the purported date when the same were alleged to have been registered in plaintiff's bill of complaint, or from any other time or at all; these answering defendants admit that no part of said purported interest upon said purported warrants has been paid.

13.

Admit that the Treasurer of the defendant Clearwater County threatens and declares that he will pay out of the warrant redemption fund all warrants outstanding against said fund held and owned by parties other than plaintiff before the payment of any of the purported warrants alleged to be held or owned by plaintiff herein; these answering defendants deny that payment of said outstanding warrants is in the plain or any violation of the right of the plaintiff herein to have each or any of its said purported warrants paid before any other warrants against said redemption fund and alleged to have been subsequently registered, shall be paid; and denies that plaintiff is entitled to have any of its alleged and purported warrants paid in any sum of money at all; denies that the threatened action, as alleged in plaintiff's bill of complaint, by the defendant treasurer is unlawful or in violation of plaintiff's rights; and denies that the plaintiff has any rights to have any of its purported warrants paid in any amount; and denies that plaintiff is entitled to have any of said purported warrants recognized as a liability against either of these defendants in any sum of money or otherwise or at all.

14.

Admit that the defendant treasurer intends to pay all warrants duly and regularly registered in order of their respective registration with the exception of the purported warrants alleged to be owned by the plaintiff herein; and deny that the plaintiff here-

in is entitled to have any of said warrants paid in any sum whatever; deny that the same are an obligation of the defendant Clearwater County in any sum whatever.

15.

Deny that the plaintiff is entitled to a temporary or any injunction restraining either of these defendants from paying warrants of said defendant county drawn on said redemption fund before paying any of the purported warrants alleged to be owned or held by the plaintiff herein.

For a further, separate and special defense to plaintiff's bill of complaint herein, defendants allege:

1.

That during the year 1914, Frank Zelenka, Frank Harrison and Elmer O. Torgerson were the duly elected, qualified and acting commissioners of Clearwater County, in the State of Idaho; and that Joseph Kauffman was the duly elected, qualified and acting clerk of the District Court and ex-officio recorder, auditor and clerk of the board of county commissioners; that during said year 1914, Blair E. Hoar was the duly elected, qualified and acting treasurer of said Clearwater County; that from the 13th day of January, 1913, to the 12th day of January, 1914, John T. Molloy was the duly elected, qualified and acting assessor of said Clearwater County; that on the day last aforesaid, said John T. Molloy resigned his office and Patrick H. Blake was appointed to fill said vacancy; that on the 8th day of December, 1914, said Patrick H. Blake resigned his said office and

thereupon Henry S. Detmer was appointed to fill said vacancy and continued to hold said office until January 11, 1915, when the two years' term expired; that said John T. Molloy had one deputy whose name was William Gaffney; that said Patrick H. Blake, while assessor of said county, had one deputy whose name was John T. Molloy; that said Henry S. Detmer had no deputy assessor and that no person or persons, other than those above named, acted as assessor or deputy assessor for said Clearwater County during the year 1914.

2.

That on the 16th day of February, 1914, Frank Zelenka and Elmer O. Torgerson, as commissioners of said Clearwater County, signed a document designated "Notice of Call of Special Session of the Board of County Commissioners of Clearwater County, Idaho", and a full, true and correct copy of such notice is annexed hereto and made a part hereof as fully as if set forth herein, and marked "Exhibit 1."

That on the 24th day of February, 1914, the then board of county commissioners of said Clearwater county purported to meet in special session to consider proposals for cruising patented timber land in said Clearwater County; that a proposal for such work was signed by M. G. Nease and filed with the board of county commissioners on the 24th day of February, 1914, by the terms of which M. G. Nease agreed to do said cruising for twelve and a half ($12\frac{1}{2}$) cents per acre; that on the same day a proposal for the doing of such work was filed by Ralph

B. Hunt wherein he agreed to do the work for eight (8) cents per acre with two (2) cents per acre additional for every acre cruised carrying over one million feet, board measure; that on the same day R. L. Rankin signed and filed a proposal for the doing of such work for seven and a half ($7\frac{1}{2}$) cents per acre; that copies of such proposals are annexed hereto and made a part hereof as fully as if set forth herein, and marked exhibits "2", "3" and "4", respectively.

3.

That said board of county commissioners on the said 24th day of February, 1914, without further investigation, and in disregard of the rights of the taxpayers of said Clearwater County, purported to enter into a contract with the said M. G. Nease for the cruising of the patented timber land in said Clearwater County for the agreed price of twelve and a half ($12\frac{1}{2}$) cents per acre; that a copy of said contract is hereto annexed and made a part hereof as fully as if set forth herein, and marked "Exhibit 5". That a full, true and correct copy of the minutes of the board of county commissioners held on the 24th day of February, 1914, as written in the minute book of said board is hereto attached and made a part hereof as fully as if set forth herein, and marked "Exhibit 6". That at that time there had been no request or application in writing from the assessor of Clearwater County for a cruise or classification of lands in said county, as recited in the said minutes; that the business transacted at said meeting was not specified in the purported call thereof, and

that the record does not show that any notice of such call was given, as required by law; that no order for said special meeting was made and entered of record as required by Section 1915 of the Political Code of Idaho.

4.

That thereafter one John Lewis, on the 8th day of April, 1914, filed his complaint in the District Court of the Second Judicial District of the State of Idaho, in and for the County of Clearwater, against Frank Zelenka, Frank Harrison and Elmer O. Torgerson, as commissioners of Clearwater County, Joseph Kauffman, as clerk of the District Court and ex-officio recorder, auditor and clerk of the board of county commissioners of said county, and Blair E. Hoar as treasurer of Clearwater County, M. G. Nease, and Clearwater County, and each and all of the said defendants were served with summons in the action, and said action sought to enjoin said defendants from further proceedings under said purported contract.

That these defendants are informed and believe, and upon such information and belief allege the fact to be that the said John Lewis instituted said suit at the instance and request of the Clearwater Timber Company and other timber companies owning large holdings of timber in said Clearwater County.

5.

That on the 9th day of April, 1914, the Honorable Edgar C. Steele, Judge of the said District Court of the Second Judicial District of the State of Idaho, in and for Clearwater County, duly and regularly

signed an order requiring the defendants in said action to show cause before said Judge why the said defendants should not be restrained from proceeding further with said contract between the said Clearwater County and the said M. G. Nease. That said order to show cause, together with affidavits annexed thereto, were served upon the said defendants in said action upon the 13th day of April, 1914; that a copy of said order to show cause, together with the affidavit of service thereof, and affidavits annexed thereto, are annexed hereto and made a part hereof as fully as if herein set forth, and marked "Exhibit 7".

6.

That immediately after the service of said order to show cause upon said defendants in the action then pending in the said district court of Clearwater County, as hereinabove alleged, to-wit, upon the 14th day of April, 1914, the said M. G. Nease consented to a cancellation of his said contract and waived all of his rights thereunder. That a copy of such consent and waiver is annexed hereto and made a part hereof as fully as if herein set forth, and marked "Exhibit 8".

7.

That immediately thereafter, to-wit, the 15th day of April, 1914, the said P. H. Blake, as county assessor of said Clearwater County, made a purported request upon said board of county commissioners that the timber land in said Clearwater County be cruised in a careful manner. That a copy of such

request is hereto annexed and made a part hereof as fully as if herein set forth, and marked "Exhibit 9".

8.

That on said date, to-wit, April 15th, 1914, the said M. G. Nease filed a proposal with the said board of county commissioners for the cruising and estimating of patented timber lands in said Clearwater County. That a copy of such proposal is hereto annexed and made a part hereof as fully as if herein set forth, and marked "Exhibit 10".

9.

That no notice or call had been made by the board of county commissioners for the submission of proposals or bids, and no other person submitted a proposal or bid for the doing of work other than the said M. G. Nease. That no specifications were ever prepared by any person representing the said Clearwater County as to the work that was to be done prior to the filing and acceptance of the proposal of the said M. G. Nease; that these answering defendants are informed and believe, and therefore allege the fact to be, that the same was purposely withheld and no notice or call given in order that the said M. G. Nease might receive a preference and be given a contract without competition and without notice to the taxpayers of said county upon terms more beneficial to the said M. G. Nease.

10.

That on said 15th day of April, 1914, the said Clearwater County attempted to enter into a purported contract with the said M. G. Nease, of Port-

land, Oregon, wherein and whereby the said M. G. Nease agreed to cruise and estimate all timber on patented lands situate in Clearwater County, Idaho, and to complete said cruise on or before the 15th day of June, 1915; that for said work the said Clearwater County agreed to pay the said M. G. Nease at the rate of twelve and a half cents per acre. That a copy of said contract is annexed hereto and made a part hereof as fully as if herein set forth, and marked "Exhibit 11".

That these defendants are informed and believe, and upon such information and belief allege the fact to be that the parties to said contract had reason to believe that the same was illegal, and purposely performed each and every act on the said 15th day of April, 1914, without notice and without competition in order to prevent the people of said Clearwater County and the taxpayers thereof from having full and complete knowledge of the transactions of said board of county commissioners and of the alleged and purported contract for the cruising of timber lands.

11.

That prior to the 15th day of April, 1914, the county commissioners of said Clearwater County had received an opinion in writing from the County Attorney of said Clearwater County, with reference to the County entering into a contract for the cruising of timber; that a copy of said opinion so received by said board of county commissioners is annexed hereto, marked "Exhibit 12", and made a part hereof as fully as if written herein.

12.

These defendants further allege that the amount agreed to be paid to the said M. G. Nease for the work to be performed by him was exorbitant and unreasonable, and that the said county commissioners adopted uniform plans and specifications of the work required, and published notice and call for bids for a reasonable length of time, that it could have received competent work for a much less sum of money.

13.

That the said county commissioners, by virtue of the affidavits annexed to the order to show cause in the action by John Lewis versus Frank Zelenka, et al., hereinabove referred to, were apprised and had reason to believe that the said M. G. Nease was exacting an exorbitant sum of money for the work he was to perform, and had reason to believe and know that the said M. G. Nease did not intend to give the county either honest or thorough work in accordance with his said contract; and that, notwithstanding such knowledge and information, the said county commissioners of said Clearwater County entered into a purported contract, as hereinabove alleged, without further investigation and without notice or call for bids.

That thereafter, to-wit, May 18th, 1914, the said M. G. Nease filed a purported bond for the faithful performance of said contract, which bond is annexed hereto, marked "Exhibit 13", and made a part hereof as fully as if herein set forth. That said bond pro-

vides that no claim or action shall be brought against the principal or surety after October 1st, 1915; that said bond did not adequately protect said Clearwater County.

14.

That while the said John Lewis kept his said action pending against the said Frank Zelenka and on the docket, he took no further steps therein after the service upon the defendants in said action of the order to show cause, until the said M. G. Nease had practically completed the examination of timber lands for which he charged the said defendant, Clearwater County; and that thereafter and on or about the 14th day of October, 1914, the said John Lewis, through his attorney, dismissed said action; that a full, true and correct copy of the order of dismissal of said action is hereto annexed, marked "Exhibit 14", and made a part hereof as fully as if herein set forth.

That the maintaining of said action without any steps being taken therein, misled many of the taxpayers and inhabitants of said Clearwater County and caused them to believe that the said plaintiff, John Lewis, intended to wage an active contest against the unlawful contract entered into by the said defendant Clearwater County and the said M. G. Nease.

15.

That the taxpayers and citizens of said Clearwater County were further deceived and led to believe that the said timber companies, through the said John

Lewis as nominal plaintiff, were, in good faith, attempting to set aside said cruising contract, by reason of the action of the said John Lewis in appealing from the order of said board of county commissioners entered into on the 15th day of April, 1914, authorizing the said cruising contract; that a copy of the notice of said appeal as served and filed on the 5th day of May, 1914, is annexed hereto, marked "Exhibit 15", and made a part hereof by reference as fully as if herein set forth.

That said appeal was pending in the District Court of the Second Judicial District of the State of Idaho, in and for the County of Clearwater, at the same time and contemporaneously with the injunction proceedings hereinabove referred to; that by reason of the pendency of the said proceedings, other citizens and taxpayers of said county, aggrieved by the action of said county commissioners in entering into said contract, desisted from instituting proceedings thereon until after the time for appeal had expired and until after the field work under said contract had been practically completed; that said appeal was dismissed on motion of the appellant on the 14th day of October, 1914.

16.

That prior to the execution of said purported contract of April 15, 1914, and on or about the 10th day of April, 1914, the said M. G. Nease brought a number of men purporting to be timber cruisers and compassmen, practically all of whom were non-residents of the State of Idaho, and commenced the examina-

tion of lands in said Clearwater County; that said men were paid by the day to examine said lands and report the data called for by said contract under the direction of the said M. G. Nease; that said work continued until about the 15th day of June, 1914, and further work was suspended until on or about the 1st day of August, 1914; that upon the date last aforesaid said work was resumed and continued to completion on or about the 19th day of October, 1914.

17.

That said contract entered into between the said Clearwater County and M. G. Nease, as aforesaid, provides "That he will make and cause to be made a complete and thorough cruise and estimate of all of the timber on the patented lands situated in Clearwater County, Idaho." That, notwithstanding said provision in said contract, the said M. G. Nease failed to make either a careful or complete or thorough cruise or estimate of the timber on the patented lands in said Clearwater County.

18.

That the said M. G. Nease failed to comply with the requirements of said contract as set forth in paragraph 2 thereof in that his said reports did not contain full and correct topographic sketches showing elevations of land above sea level, and that the elevation shown on said reports were not taken by means of Aneroid Barometers read at the points indicated on said sketches and plats; that said reports and plats furnished by said M. G. Nease under said

contract did not correctly show the openings, burns, marshes, rivers, lakes, creeks, trails, roads, water falls, valuable stone, mineral out-croppings or other topographic features observed by his said cruisers; that said reports furnished under said contract did not correctly describe the different varieties of timber as required by said contract.

19.

That said Clearwater County is rough and mountainous and cut up with deep creeks, *canons* and ravines; that the timber growing upon said land is of many different sizes and varieties and there is practically no uniformity with the class of timber growing upon one legal subdivision compared with another legal subdivision in the same locality. That in order to carefully cruise and estimate the amount of timber growing upon the timber lands in said county and to furnish other data agreed to be furnished by the said M. G. Nease in accordance with his said contract, it was and would have been necessary for such timber cruisers to have made at least two runs through each 40 acre tract of timber land; and that it is customary, in making cruises and estimates of timber where a careful estimate is required, that the timber cruisers make at least two runs through each 40 acre tract of land. That on account of the character of the timber land in said Clearwater County and the underbrush growing thereon and the prominent ridges and deep *canons* to cross, it is practically impossible for a timber cruiser to carefully estimate more than 160 acres of land per day; and that when

the said M. G. Nease first did work under his said contract, he required all of the timber cruisers working for him to make at least two runs through each 40 acre tract of land; that notwithstanding said instructions a number of timber cruisers who worked for the said M. G. Nease made only one run through each 40 acre tract of land.

That after the said M. G. Nease and his men returned to Clearwater County in August, 1914, as hereinabove alleged, the said men were instructed to make only one run through each 40 acre tract of land; that thereafter the said timber cruisers were rushed and required and persuaded to make greater advances in their work and to hurry the completion of the work and the great majority of cruisers working for the said M. G. Nease actually reported as having estimated and cruised 320 acres of land per day, and the great majority of work furnished by said timber cruisers was inaccurate, uncertain and indefinite and of no value to the said Clearwater County.

That notwithstanding the instructions to make only one run through each 40 acre tract of land, the maps and plats furnished by the said M. G. Nease to the defendant Clearwater County falsely indicated that a 2-run cruise had been made upon and over all of the land for which the said M. G. Nease charged and was paid.

20.

That none of the original estimates or plats compiled by the said timber cruisers were ever delivered

to the defendant Clearwater County, but that the estimates, reports and plats of said cruisers were copied at the office of said M. G. Nease, and such copies were delivered to said Clearwater County; that in making up said copies for Clearwater County the estimates, reports and topographical sketches of said cruisers were arbitrarily altered and modified and fictitious data was therein inserted and used; that the names of individual cruisers did not appear upon the reports of the lands cruised by them respectively, as finally submitted to said Clearwater County.

21.

That at the time of employing said cruisers the said M. G. Nease gave them certain instructions in writing; that a copy of said instructions is hereto annexed, marked "Exhibit 16", and made a part hereof by reference as fully as if herein set forth; that during the cruise of said lands under said contract, and particularly during the months of August, September and October, 1914, the cruisers and other employees of the said M. G. Nease ignored and violated said instructions and that the fact that his said instructions were being ignored and violated was well known to the said M. G. Nease, and that such violations were with his consent and acquiescence and were encouraged by him and by his foreman for the purpose of facilitating the work and completing the said contract.

22.

That the said M. G. Nease did not, during the life of said contract, nor did any person in his employ,

hold any office in said Clearwater County, nor was he or any of his said employees regularly or otherwise deputized to assist the assessor of said county in valuing and assessing property for taxation; that neither the said M. G. Nease nor any person in his employ took any oath of office or any other oath whatsoever, to perform the duties of an assessor or deputy assessor or to perform any other duties; and that neither the said M. G. Nease nor any person in his employ received any official appointment as deputy assessor or otherwise; that no officer of said Clearwater County had any authority or control over the said timber cruisers or other employees of the said M. G. Nease.

23.

That at the time of entering into said contract the county assessor of Clearwater County was exclusively invested by the laws of Idaho with all of the powers and duties incident to the valuation of lands for purposes of taxation, and that such valuation and assessment were no part of the duties of the county commissioners of said county; that under the laws of Idaho the board of county commissioners of said county had no powers or duties with reference to the assessment and taxation of property other than to equalize the valuation thereof as fixed by the county assessors.

24.

That the said board of county commissioners of Clearwater County and the said M. G. Nease at the time of entering into said purported contract on the 15th day of April, 1914, well knew that the said pur-

ported contract was prohibited by the provisions of the statutes and constitution of the State of Idaho, and well knew that the purported indebtedness attempted to be created by said alleged contract would exceed the income and revenue from all sources provided for Clearwater County for said year; that no election was called for the purpose of authorizing a tax sufficient to pay the interest on said alleged indebtedness or to constitute a sinking fund for the payment of the principal thereof; and said purported contract was specifically prohibited by the provisions of Section 3 of Article 8 of the Constitution of the State of Idaho. That said alleged contract was one entire and complete contract. That the ordinary and necessary expenses of said Clearwater County for the fiscal year and also for the calendar year in which said purported contract was executed, exceeded the income and revenue provided for said county for said year.

25.

That the purported indebtedness so attempted to be created by the said alleged contract, and for which said purported warrants were given to the said M. G. Nease, was neither an ordinary or necessary expense incurred under the general laws of the State of Idaho.

26.

That a copy of the annual financial statement of the auditor of said Clearwater County for the fiscal year ending April 10, 1915, is annexed hereto and made a part hereof as if herein set forth, and marked

“Exhibit 17.” That from said financial statement it appears that the total value of the taxable real property in said Clearwater County for the fiscal year ending April 10, 1915, amounted to \$10,600,702; that the county commissioners for said county made a levy of five mills on the dollar of assessed valuation for current expense purposes; that the greatest amount that could have been produced if all of the taxes under said levy had been paid, would have been \$53,003.51. That said Clearwater County received from all sources during the fiscal year ending April 10, 1915, revenue amounting to only \$53,310.06; that the aggregate current and necessary expense for said Clearwater County during said fiscal year amounted to the sum of \$59,353.08; that said last mentioned sum was exclusive of any purported warrants issued to the said M. G. Nease.

27.

That on or about the 9th day of January, 1915, the treasurer of said Clearwater county paid certain warrants theretofore issued to the said M. G. Nease under said purported contract to the aggregate amount of \$18,926.99 with accrued interest thereon; that the terms of office of all officials of said Clearwater County expired on the 11th day of January, 1915, and thereupon the defendant, Oren D. Crockett, succeeded to the office of said treasurer.

28.

That these answering defendants are informed and believe and upon such information and belief

allege the fact to be that no hearing was ever had upon the order to show cause why the said purported contract should not be cancelled in the action pending in the District Court as hereinabove alleged, but that the public generally and taxpayers of said Clearwater County were of the opinion that said suit would be pressed for the protection of the taxpayers of said Clearwater County and that the same would be vigorously contested.

29.

That these defendants are further informed and believe and allege the fact to be that shortly after the execution of the purported contract bearing date April 15, 1914, the representatives of the Clearwater Timber Company, and some of the other owners of large timber interests, had an understanding with the said M. G. Nease that said suit would not be further prosecuted; that thereupon the said M. G. Nease was furnished with a copy of the timber estimate and cruise of the Clearwater Timber Company and copies of the cruise of other companies; that upon assurance that the suit then pending would not be prosecuted and that the same would be dismissed, the said M. G. Nease commenced to crowd and hurry the timber cruisers under his employment; that he insisted that they average at least 320 acres of timber land cruised per day; that the said M. G. Nease also instructed the timber cruisers to include in their estimate timber lands which they knew to be unpatented and not taxable, well knowing that the same was in violation of the express terms of his contract.

30.

That under said purported contract of April 15, 1914, the said M. G. Nease presented his claims to the then board of county commissioners of Clearwater County for cruising 503,997 and 52/100 acres of land at twelve and a half ($12\frac{1}{2}$) cents per acre; that of said total acreage charged for, approximately only 440,000 acres consisted of patented lands subject to taxation, on which timber was standing and growing, as shown by the estimates and reports returned to said county by said M. G. Nease.

That of the patented lands included in the reports of said M. G. Nease, there was at the time of said examination, as shown by said reports no timber standing or growing upon approximately 28,000 acres thereof.

That of the total acreage charged for by said M. G. Nease, approximately 35,000 acres was unpatented land belonging either to the federal government or to the state of Idaho and not subject to taxation at the time of said examination; and that of said 35,000 acres there was no timber standing or growing upon approximately 7500 acres thereof, as shown by the report of said M. G. Nease.

That of the total acreage charged for by said M. G. Nease, approximately more than 110,000 acres thereof was untimbered.

That the fact that certain lands charged for by said M. G. Nease was unpatented and untimbered at the time of his said examination was well known to the said M. G. Nease; that in plain violation of the

express terms of his contract, and with the acquiescence of the then board of county commissioners of said Clearwater County, the said M. G. Nease was given credit and had a large amount of warrants issued to him in payment for said unauthorized work.

31.

That after the entering into of said alleged contract between the defendant Clearwater County and the said M. G. Nease, each of the then county commissioners had been defeated at a general county election and were not reelected, and that in anticipation of such contingency the said county commissioners and the said M. G. Nease made great haste to complete said work and return to said county books purporting to show estimates and topographical maps in compliance with the alleged contract, and purported warrants were issued and registered in payment therefor without careful or any checking by the then board of county commissioners of said Clearwater County to ascertain whether or not the work had been performed pursuant to the terms of the alleged contract or whether or not the county was issuing warrants in payment for cruising and estimating a large quantity of non-taxable, non-assessable and untimbered land.

WHEREFORE, these defendants pray that plaintiff's bill of complaint be dismissed and that the plaintiff take nothing thereby; that this court decree that the alleged contract entered into between defendant Clearwater County and M. G. Nease was illegal and

void; that all of the purported warrants referred to and described in plaintiff's bill of complaint and purporting to have been issued by the defendant Clearwater County be declared void and illegal, and that the same be delivered for cancellation; and that it be further decreed that the defendant Clearwater County is not liable for any indebtedness by, for or on account of the issuance of said pretended warrants; and that defendants have such other and further relief in the premises as to the court may seem proper.

FRED E. BUTLER,
Solicitor for Defendants,
Lewiston, Idaho.

(Duly verified.)

"EXHIBIT 1."

Feb. 16, 1914.

NOTICE OF CALL OF SPECIAL SESSION OF
THE BOARD OF COUNTY COMMISSIONERS,
CLEARWATER COUNTY, IDAHO.

Notice is hereby given, that in pursuance to an order made by a majority of the Board of County Commissioners of Clearwater County, State of Idaho, that a special meeting and session of said Board is called on the 24th day of Feby., 1914, for the purpose of taking up the matter pertaining to the assessment of timber and timber land in Clearwater County, and for the purpose of entering into a contract to determine the values of timber and timber lands in said county; to hear the petitioners in the matter of a special elec-

tion for the purpose of voting on the question of issuing negotiable coupon bonds in the sum of Thirty Thousand Dollars, to defray the expense of constructing and furnishing a court house and jail.

FRANK ZELENKA,

Commissioner Second Dist.

ELMER O. TORGERSON,

Commissioner Third Dist.

"EXHIBIT 2."

Portland, Oregon, February 20th, 1914.

*To the Honorable Board of County Commissioners of
Clearwater County, Idaho.*

Gentlemen:

I beg to submit the following proposal for the examination of such patented lands situated in Clearwater County as your board may designate and the cruising of the timber thereon.

I will examine and cruise such patented lands as may be designated by your board between this date and such date as may be required by your board at and for the price of $12\frac{1}{2}$ twelve and one-half cents per acre. I will give a bond in some surety company qualified to do business in your state in such reasonable sum as the County Commissioners may require, said bond to provide for the faithful performance of the terms of the contract between the County Commissioners and myself.

The examination and report included in this proposal will show the quantity and quality of all timber on each governmental subdivision, said report

including a full description of timber as to size, number of logs per tree, percentage of surface clear, damage by fire or otherwise and the probabilities of fire. Will fully describe logging conditions, showing accessibility of timber to market and the best manner of handling same. Said reports will show the general topography of all land cruised. This topography will be sketched to show all openings, clearings, burns, marshes, rivers, lakes, creeks, trails, roads, waterfalls, coal, valuable stone, mineral out-croppings and all other topographic features usually observed by cruisers, said reports to include a general description of all land cruised, describing its adaptability for agricultural, grazing or other purposes after the timber is removed, said reports to show the elevation of all lands cruised by means of an Aneroid Barometer.

Upon a witness tree at each corner located will mark with an axe a letter N in such manner as to be easily identified.

This proposal is to be construed as covering EVERYTHING NECESSARY to make a complete estimate of the timber and description of all lands cruised and to include any features which in the judgment of the County Commissioners would be of additional benefit to Clearwater County.

In case a contract should be entered into between the County Commissioners and myself, I will employ none but the most competent cruisers and compassmen and will not sublet any part of the work and will make a very careful cruise and comprehensive report on all lands cruised.

Attached hereto you will please find copy of form on which I propose to make my reports. This form, however, to be subject to the necessary changes to meet any particular requirement of Clearwater County.

This proposal is for the purpose of permitting your board to select and have cruised by me a sufficient area of your county to enable you to determine as to the advisability of having the entire county cruised and classified.

Respectfully submitted,

M. G. NEASE.

(Endorsed.)

6496, M. G. Nease, Bid for Cruising Timber, etc.

Filed February 24th, 1914.

Joseph Kauffman, Clerk Co. Com.

By F. M. Shreve, Deputy.

"EXHIBIT 3."

*To the Honorable County Court of Clearwater
County:*

I herewith submit the following proposal for estimating the timber in Clearwater County for the purpose of valuation for taxation, to-wit:

I will contract and agree to make a careful, complete and thorough estimate of all the timber in said county of all the trees having a stump diameter of 16" and upwards to an 8" top diameter and estimate the piling to a stump diameter of not less than 12" and not more than 16" and a top diameter of 8", and will report the character of the various kinds of timber, giving an average stump diameter, average

number of 16-ft. logs to the tree, the percentage of surface clear logs and also describe the logging conditions, giving the distance to outlets, such as rail or stream, also include all damages by fire or otherwise and the possibilities of fire, and will make a topographical map showing all marshes, clearings or burns, lakes, rivers, creeks, trails, rock outcroppings, ridges and mountain bluffs, etc., as they exist.

I will give a general description of the character of the land describing its adaptability for agricultural, grazing, or other purposes after the timber is removed, also show the contours at 50 ft. intervals, established by means of an aneroid. Will show on this map all wagon roads and describe them, such as indicating first-class wagon roads passable at all times of the year and indicating what would be considered a good county road, also indicating poor or private roads.

This report will show approximately the number of acres included in the various topographical features in each forty and the estimate will be given on all sound timber, although it may be limby and rough, but if sound shall be included in this estimate.

In performing the field work, I will make one run through each forty in sections cruising less than 8,000,000 ft. B. M., and two runs through sections carrying over this amount.

All my work shall be subject to a check made by a competent and recognized cruiser who shall be selected by the said County Court and myself, and in case

a dispute should arise as to the amount of timber on any sub-division, it will be understood and agreed that I will abide by the decision of an arbitrator who shall also be a recognized cruiser who is to be selected by the said Commissioners and myself, jointly, and in case the estimates which I submit shall be found to be more than 15% variance from the estimates of the arbitrator, in that event I agree to pay the wages and expenses of such arbitrator.

Said reports shall show that the section corners and quarter corners have been located on the subdivisions designated on the land to be estimated and one witness tree, if found standing, shall be marked with an "X" large enough to be easily found.

In writing up said report, it shall be full and complete, neat and perfectly plain and the boundaries of all topographical features will be plainly traced.

In case a dispute should arise between the owners of the sub-divisions and Clearwater County as to the amount, character and quality of the timber on any said sub-divisions cruised under my supervision, I hereby agree to stand back of the data submitted for the purpose of saving Clearwater County from any expense, loss or damage by reason of having the same re-estimated, to furnish a good and sufficient bond in the sum of dollars, to be approved by the said County Court.

It shall be agreed that in hiring cruisers on this work, they shall give a bond sufficient to insure their ability and honesty and to be approved by the said County Court and that the said cruisers shall sign

each report made by them and shall state the number of times which they ran through each forty acres.

I would agree to have all the original estimates completed on or before the 1st day of June, 1915, and arranged in neat book form, together with a contour and topographical map of each township.

It shall be agreed that I shall hire all cruisers and said cruisers shall work directly under my supervision and all bills of transportation, subsistence, labor, etc., in carrying out said cruise shall be made by each cruiser which shall be O. K'd. by myself and paid by said County Court, and the total cost of making the cruise, covering field expense, subsistence, labor, transportation, supervision and the making of reports and maps shall not exceed Eight (8c) cents per acre, and as a compensation for my services I would require two (2c) cents per acre for each and every acre cruised in sections carrying over 1,000,000 ft. B. M. Payments for said compensation to be made within thirty days after acceptance of the reports submitted by me, and said reports shall be checked and settlement made within thirty days after their acceptance.

Respectfully submitted this 21st day of February, 1914.

RALPH B. HUNT.

(Endorsements)

6497

Ralph B. Hunt

Bid for Cruising Timber.

Filed *Feb'y. 24, 1914.*

Joseph Kauffman,

Clerk Co. Com.

By F. N. Shreve,

Deputy.

"EXHIBIT 4."

THIS AGREEMENT made and entered into thisday of.....by and between COUNTY OF CLEARWATER, State of Idaho, through Frank Zelenka, Frank Harrison and E. O. Torger-son, acting as County Commissioners in and for said County, parties of the first part, and R. L. Rankin, party of the second part, WITNESSETH:

That for the consideration hereinafter provided to be made and paid to the said second party by the first parties, the said second party hereby covenants, contracts and agrees that he will make a careful, complete and thorough estimate of all the timber in Clearwater County that will run 1,000,000 ft. B. M. per section.

1. Party of the second part in making estimates of the timber will include all trees having a stump diameter of 16" and upwards to an 8" top diameter, and in estimating piling he will include all trees having a stump diameter or not less than 12" or more than 16" and a top diameter of 8", and will include in his report a description of the character of the various kinds of timber, giving an average stump diameter, average number of 16-ft. logs to the tree, the percentage of surface clear logs, and

2. Also describe logging conditions, giving distance to outlets, such as rails or stream, also including in his report all damages by fire or otherwise and the possibilities of fire.

3. In covering the ground, he will make a topographical map showing all openings, clearings,

burns, marshes, lakes, rivers, creeks, trails, rock outcroppings, ridges and mountain bluffs, etc., as they exist.

4. Also show contours at 50 ft. intervals, established by means of an aneroid.

5. He will give a general description of the character of all land, describing its adaptability of agriculture, grazing or other purposes after the timber is removed.

6. He will show on this map all wagon roads and describe them, such as indicating first-class wagon roads passable at all times of the year, indicating what would be considered a good county road and indicating poor or private roads.

7. It is necessary after stating the above that he also show the approximate number of acres included in the various topographical features in each forty. An estimate will be given on all sound timber, although it may be quite limby and rough.

8. It is further understood that he will make one run through each forty in sections cruising less than 8,000,000 ft. B. M. and two runs through sections carrying over this amount.

9. It is further understood and agreed that all the work shall be subject to a check and this checker designated by said county commissioners, said checker to be a man who is a recognized cruiser and whose estimates have been accepted and bought on; and in case of dispute between the checker and second party as to the amount of timber on any sub-division that they will abide by the decision of an arbitrator who

is a recognized cruiser to be selected by the county commissioners and party of the second part, jointly; and in case the estimates of said second party shall be found to be more than 15% variance from the estimates of the arbitrator, said second party shall pay the wages and expenses of such arbitrator.

10. Said party of the second part will locate the section corners and quarter corners on all subdivisions designated as above described and describe in his report the witness trees found at each corner and on one witness tree at each corner located, he will mark with the letter "H" large enough to be easily found.

11. In writing up his report, it shall be full and complete, neat and perfectly plain, and the boundaries of all topographical features will be plainly traced.

12. It is further understood and agreed that the cruising of the sub-divisions as above described are for the purpose of making an equitable and uniform assessment of the timber lands and that the second party will make an effort at uniformity in his estimate of said timber and that said checker in checking the estimates must conform to this part of the agreement; and in case of a dispute arising between the owners of the sub-divisions and Clearwater County as to the amount and character and quality of the timber on any of said sub-divisions cruised under this contract, the said party of the second part further agrees to stand back of his data and, for the purpose of saving Clearwater County from any expense, loss

or damage of such cruise by reason of having the same recruised, to furnish a good and sufficient bond in the sum of dollars to be approved by the County Court.

13. It is further agreed that the said first party shall have said checker check and report on all estimates turned in within thirty days after they are received by the county and shall furnish the said second party with an acknowledgment of the acceptance or rejection of said estimates.

14. It is also agreed that said second party in hiring cruisers on this work shall demand a bond sufficient to insure their ability and honesty and to be approved by the County Court, and that said cruisers shall sign each report made by them and shall state the number of times which they ran through each forty acres.

15. It is also agreed that the original estimates covered by this contract shall be completed on or before the first day of June, 1915, and arranged in a loose-leaf binder according to Township descriptions, together with a contour and topographical map of each township.

16. It is understood and agreed that within thirty days after estimate blanks are filed in said binder, they shall be taken out if disapproved and if accepted shall go on record, and in this event the party of the first part shall furnish the party of the second part a written acceptance of the work completed.

17. IN CONSIDERATION of the true and faithful performance by the said party of the second part

of the terms and conditions of this contract on his part required to be done and performed, the first party agrees to pay to the said second party, his order or assigns, the sum of seven and one-half ($7\frac{1}{2}$) cents per acre for each and every acre in the sections cruised under the terms of this agreement.

18. And it is further agreed that the final payment for this work shall be made on or before September 1, 1915.

I HEREWITH submit a supplementary contract which will follow the agreement herewith attached in every particular, excepting the time which may be extended as agreed upon by the contracting parties and also excepting the amount of timber which shall be at least three townships to be selected by the County Court within a reasonable distance from transportation. This is done for the purpose of making a test case.

It is hereby understood and agreed that in the event of the successful outcome of this test case, that the contract herewith attached shall be in full force and effect for the remainder of the timber.

(Endorsed)

6498 E. L. RANKIN.

Filed Feby. 24, 1914.

Joseph Kauffman, Clerk Co. Com.

By F. N. Shreve, Deputy.

“EXHIBIT 5.”

THIS AGREEMENT, Made and entered into this 24th day of February, A. D. 1914, by and between Frank Zelenka, Elmer O. Torgerson and Frank Harrison, the legally qualified and acting members of the Board of County Commissioners of Clearwater County, Idaho, hereinafter designated as party of the first part, and M. G. Nease of Portland, Oregon, hereinafter designated as party of the second part, WITNESSETH:

That for the consideration hereinafter provided to be made and paid by the said party of the first part to the said party of the second part, the said second party hereby covenants and agrees:

1.

That he will make a careful, complete and thorough cruise and estimate of all the timber on such lands situated in Clearwater County, Idaho, as may be hereafter designated by the first party, and in that regard the first party shall have the right at any time to designate such tracts of land that it desires to have cruised, and upon written notice *be* given to the second party he shall proceed to cruise the lands so designated by the first party; provided, however, that the first party shall not require the second party to cruise any tract of land of a lesser area than 23,000 acres in any one adjacent territory.

2.

That upon said cruise being made from time to time, the second party hereby agrees to make reports

of such cruise, said reports to contain a topographic sketch, showing elevation of land above sea level taken by means of aneroid barometer; also showing all openings, clearings, burns, marshes, rivers, lakes, creeks, trails, roads, water falls, valuable stones, mineral out-croppings and all other topographic features observed by the cruisers; said reports to include a general description of the character of all the lands cruised describing its adaptability for agricultural grazing or other purposes after the timber is removed; said reports to describe the character of the different varieties of timber, giving the average stump diameter, the average number 16' logs per tree, the percentage of surface clear timber, and also describe logging conditions, showing distance to outlets, such as railroad or driving stream; said reports to show damage by fire or otherwise and the probability of fire; and will furnish all blue prints, blanks and binders for reports at his own expense, and all reports herein agreed to be furnished to said first party shall be upon such quality of paper and of the size and form and contain all the data above provided, accordingly as shall meet the approval of said first party.

3.

That in making said cruise, the said second party shall use as a basis in estimating saw timber all trees having not less than a 12-in. stump diameter to an 8-inch top, and as a basis in estimating cedar poles all trees having a top diameter of not less than 6 inches 25 feet above the stump, all fir and tamarack

which shall not be classed as saw timber shall be designated and counted as ties and for this purpose a tie shall be considered as being 8 feet long and of standard dimensions.

4.

The said second party agrees to begin cruising such lands as shall be designated by the first party within thirty days after receiving written notice of the lands selected and designated by the first party to be cruised, and will energetically continue cruising thereof subject to weather conditions, and shall make reports to the said first party for the use of the assessor of said county at intervals not exceeding thirty days.

The second party shall also as a part of this contract furnish and file with the Board of County Commissioners of said County a bond with sureties to the satisfaction and approval of the first party in the sum of FIVE THOUSAND DOLLARS, which shall provide that the second party shall faithfully perform all of the terms and conditions of this contract on his part to be done and performed, which bond shall continue and be in force and effect from April 1st, 1914, up to and until September 1st, 1914, and no money shall be paid to the said second party under this contract until such bond shall be filed and approved by the said first party.

5.

In consideration of the true and faithful performance by the second party of the terms and conditions of this contract on his part required to be done and

performed, the first party agrees to pay to the said second party or to his order or assigns, a sum equal to 121½ cents per acre for all land cruised and reported on by said second party, accordingly as aforesaid, which shall be accepted and approved by the first party, as follows, that is to say:

At each regular term of the Board of County Commissioners or at a special meeting called for this purpose by said board of county commissioners of said county during the life of this contract, said board of county commissioners shall examine, accept or reject all reports filed by the second party prior to said meeting, and shall

Then give to the second party or to his order or assigns, an acceptance or rejection in writing as the case may be, of said reports, and all acceptances shall state and specify the amount due the second party for said work the said party of the first part agrees to cause to be issued to the said party of the second part or his order or assigns, County warrants drawn on the Current Expense Fund for an amount equal to 80% of the amounts due the said second party as shown by the accepted reports, the remaining 20% shall be paid to the second party within sixty days after the completion of the contract and acceptance of the work.

6.

It is further agreed by and between the parties hereto that in case any cruise made by the second party as shown by his said reports, shall be disputed and the owner of the timber so cruised desires to

have the same recruised, and the said board of County Commissioners of Clearwater County shall make demand therefor, that both parties to this contract shall select some competent cruiser satisfactory to both parties, and the cruiser so selected shall go over and cruise the tract or tracts in dispute, and the cruise of the party so selected shall be taken as final. If the cruise of the party so selected as arbitrator varies more than 20% above or below the cruise of the party of the second part, then the compensation of said arbitrator and expense of the recruise shall be paid by the party of the second part, but in case the cruise of the arbitrator shall not be more than 20% above or below the cruise of the party of the second part, then the compensation of said arbitrator and expense of said recruise shall be paid by the party owning the land in dispute and demanding the recruise.

7.

It is further stipulated and agreed that all cruises that shall be rejected by the first party shall be immediately corrected and the proper report and correct cruise of the lands included therein shall be immediately made by the second party accordingly as directed by the first party; and if the second party fails so to do, the first party shall have the right to cause the same to be cruised and the reports accordingly as hereinbefore agreed to be made and the cost and expense thereof above 12½ cents per acre shall be paid by the second party to the first party on demand, and the payment thereof shall be secured by the bond filed herewith.

8.

The said party of the second part hereby agrees that he will not sub-contract any part of the work to be done under the terms of this contract.

IN WITNESS WHEREOF, The parties hereto have caused these presents to be executed in duplicate copy, the first party, Clearwater County, by its Board of County Commissioners, pursuant to an order of the Board of County Commissioners of said county this day duly adopted and passed authorizing the execution of this instrument, together with the seal of said county, and the second party, M. G. Nease, all done the day and year first above written.

FRANK ZELENKA,

Chairman of Board of Co. Comrs.

FRANK HARRISON,

County Comrs.

ELMER O. TORGERSON,

County Comrs.

M. G. NEASE,

Party of the second part.

Executed in the presence of:

P. H. BLAKE.

JNO. T. MOLLOY.

Joseph Kauffman,

Clerk of Board of Co. Comrs.

Attest: F. N. Shreve,

Deputy Clerk of Board of Co. Comrs.

Endorsed: File No. 6499. Contract for cruising timber. Filed Feby. 24, 1914. Joseph Kauffman, Clerk Co. Com. By F. N. Shreve, Deputy.

"EXHIBIT 6."

Orofino, Idaho, Feby. 24, 1914.

Board met in special session pursuant to call of Feby. 16, 1914.

Present: Frank Harrison, Commissioner First Dist., Frank Zelenka, Chairman and Commissioner Second Dist., Elmer O. Torgerson, Commissioner Third Dist., Joseph Kauffman, Clerk, by F. N. Shreve, Deputy.

The following proceedings were had, to-wit:

In the matter of the request and application of the assessor of Clearwater County for a cruise and classification of lands in Clearwater County and furnishing to the Assessor's office of records and maps necessary to make a just and correct assessment of such lands was taken under advisement and carefully considered by the Board.

After full and due consideration of the matter and an examination of the proposals of M. G. Nease, R. B. Hunt, and R. L. Rankin for the cruising of the lands in Clearwater County, it is decided by the Board that it is for the best interests of the taxpayers that a portion of the lands of said County be cruised, and upon further consideration it was decided by the Board that the proposal of M. G. Nease for the cruising of these lands was the best proposal submitted and it was ordered by the Board that the proposal of M. G. Nease be accepted, and that contracts be executed in accordance with the said proposal, and the County Attorney upon request of the Board prepared the contract between the County of Clearwater and

M. G. Nease which was duly executed and signed by the Board of Co. Comrs. and M. G. Nease.

Board adjourned sine die.

FRANK ZELENKA,
Chairman of Board.

Attest:

JOSEPH KAUFFMAN,
Clerk of Board.

F. N. SHREVE, Dep.

"EXHIBIT 7."

*In the District Court of the Second Judicial District
of the State of Idaho, in and for the
Clearwater County.*

JOHN LEWIS, Plaintiff,

vs.

FRANK ZELENKA, FRANK HARRISON, ELMER O. TORGERSON, as Commissioners of Clearwater County, JOSEPH KAUFFMAN, as Clerk of District Court and Ex-Officio Recorder, Auditor and Clerk of Board of Commissioners of said County, BLAIR E. HOAR, as Treasurer of said County, M. G. NEASE and CLEARWATER COUNTY, Defendants.

COPY OF ORDER TO SHOW CAUSE. AFFIDAVIT OF SERVICE and AFFIDAVITS—Consisting of 22 following pages:

(Title of Court and Cause.)

AFFIDAVIT OF SERVICE OF SUMMONS.

State of Idaho,

County of Nez Perce,—ss.

Leo McCarty, being first duly sworn on oath deposes and says:

That he is a citizen of the United States and a resident of Nez Perce County, State of Idaho, over the age of twenty-one years, and not a party to or interested in the above entitled action and competent to be a witness therein; that on the 13th day of April, 1914, affiant delivered to and left with the defendants, Frank Zelenka, Frank Harrison, Elmer O. Torgerson, Joseph Kauffman, Blair E. Hoar and M. G. Nease, and each of them, personally, in Orofino, Clearwater County, State of Idaho, a full, true and correct copy of the annexed summons, also a full, true and correct copy of the complaint in said action mentioned in said summons, and also a full, true and correct copy of the order to show cause in said action, annexed hereto and signed by the Judge of the above entitled court April 9, 1914, and also a full, true and correct copy of the affidavits of John Lewis (and documents annexed thereto) and W. B. Kinne all annexed hereto.

Affiant further says that he also delivered to and left with Frank Zelenka, Chairman of the Board of Commissioners of Clearwater County, Idaho, personally, in Orofino, Clearwater County, Idaho, on the 13th day of April, 1914, for the defendant Clearwater County, a full, true and correct copy of the an-

nexed Summons, also a full, true and correct copy of the complaint in said action mentioned in said summons, and also a full, true and correct copy of the order to show cause in said action, annexed hereto and signed by the Judge of the above entitled court April 9, 1914, and also a full, true and correct copy of the affidavits of John Lewis (and documents annexed thereto) and W. B. Kinne all annexed hereto.

LEO McCARTY.

Subscribed and sworn to before me this 16th day of April, 1914.

(Seal)

FRED E. BUTLER,

Notary Public in and for Nez Perce County, Idaho.

(Title of Court and Cause.)

ORDER TO SHOW CAUSE.

On the complaint of the Plaintiff, duly verified, copy of which is hereto annexed, and upon the affidavit of the plaintiff hereto annexed and the affidavits and other documents annexed to same, and the affidavit of W. B. Kinne hereto annexed and the documents annexed to the same.

It is ordered that the said defendants and each of them show cause before me at Moscow, in the County of Latah, State of Idaho, on the 21st day of April, 1914, at two o'clock P. M., why an injunction should not be issued restraining the defendants Frank Zelenka, Frank Harrison and Elmer O. Torgerson, as County Commissioners and their successors as such, from allowing any claim against Clearwater County under or upon or pursuant to the con-

tract between the said County and the defendant Nease referred to in the complaint in the action, and from levying any tax payment on said contract, and enjoining the defendant Joseph Kauffman, as Auditor of Clearwater County and his successors as such, or any deputy of said Kauffman and his successors from issuing any warrant upon any fund of said Clearwater County in favor of the defendant M. G. Nease or his assigns upon any claim under or upon, or pursuant to the said contract and enjoining the defendant Blair E. Hoar, as Treasurer of Clearwater County and his successors as such and deputies of said Hoar or his successors as Treasurer of said County, from paying from the funds of Clearwater County any sum to the defendant M. G. Nease or his assigns under, pursuant to or upon the said contract, or upon any warrant issued in favor of said Nease or his assigns on any claim made on, under or pursuant to said contract, and enjoining the defendant Clearwater County, and all its officers and deputies thereof and assistants, either now in the office or hereafter coming into office at any time from allowing any claim in favor of the said Nease or his assigns against the said County upon, under or pursuant to said contract, and from issuing any warrant on any such claim or from paying any such warrant, and enjoining the defendant M. G. Nease from filing any claim against said County upon, under or pursuant to said contract, or from commencing any action or proceeding of any nature against said County or any of its officials thereon ;

It is further ordered on motion of plaintiff that pending the hearing and final decision upon this order to show cause that the defendants and each of them be and they hereby are restrained from doing the things or any of them which would violate the terms of the injunction above described, against the issuance of which they are hereby ordered to show cause as aforesaid;

And you will show cause at the time and place aforesaid also against the granting of such other and further relief as may be just and proper in the premises.

Done at Chambers at Lewiston, Idaho, this 9th day of April, 1914.

EDGAR C. STEELE,
District Judge.

State of Oregon,
County of Multnomah,—ss.

N. C. INGRAM, being duly sworn, on oath deposes and says:

That he is a resident of Portland, Oregon, and is a timber estimator by profession; that he has been engaged in the business of cruising or estimating timber and its accessory branches for nine or ten years last past; that early in the year 1913, he entered the employ of Nease Timber Company, which had a contract with Clackamas County, Oregon, for the cruising of the standing timber in said county; that he entered upon the performance of his duties in said county on or about February 2, 1913, and continued to work estimating the timber in said county until

early in July, 1913; that all of the work done by him in Clackamas County was done under the personal direction and supervision of M. G. Nease, who at that time was the manager of Nease Timber Company, and who directed all of the work of cruising the timber in Clackamas County; that typewritten instructions as to the method of estimating timber were given to affiant by M. G. Nease, and that afterwards said M. G. Nease directed affiant to get over as large a tract as possible each day and in no event less than three hundred twenty acres a day; that affiant averaged not less than twelve or thirteen forty-acre tracts each day during his employment in Clackamas County; that verbal instructions from M. G. Nease were to go through each forty-acre tract but once; and that affiant was paid by the day for work done in Clackamas County.

That thereafter and on or about July 7th, or 8th, 1913, affiant began work cruising timber in Clatsop County, Oregon, under a sub-contract with Nease Timber Company, which had the contract with Clatsop County for the cruising of all timber in said county, under which the Nease Timber Company was to be paid and subsequently was paid twelve and one-half cents ($12\frac{1}{2}c$) per acre; that by the terms of said sub-contract affiant was to be paid four cents (4c) per acre for all timber cruised by him, and out of said sum of four cents per acre, affiant was to pay and did pay his compass men and the expenses of moving and board while on the work; that the typewritten instructions given him by the Nease Timber

Company with regard to said cruise were substantially the same as those given to him in Clackamas County, and would have resulted in a more thorough cruise than was made; that after affiant had received typewritten instructions for Clatsop County, said M. G. Nease, as manager of the Nease Timber Company, gave to him verbal instructions superseding the written instructions, which verbal instructions were substantially the same as the verbal instructions received by affiant in connection with the Clackamas County cruise; that during the time of his employment in Clatsop County, which ended about September 1, 1913, affiant cruised substantially eight or nine forty-acre tracts per day; that in making said cruise, he went through each forty-acre tract but once, in accordance with the verbal instructions given by M. G. Nease; that in order to attain the average which he attained in Clatsop and Clackamas Counties, it was possible to go through each forty-acre tract but once, and a thorough cruise under such circumstances was impossible.

That after the completion of the work, affiant endeavored to collect the money due to him from the Nease Timber Company, but that M. G. Nease, in behalf of said Company, refused to pay affiant unless he would sign a statement that the timber was cruised in accordance with the written instructions of the Nease Timber Company. That affiant was unwilling to sign such statement for the reason that the work done by him was done under verbal instructions, but finally through necessity signed such state-

ment and received the money due to him, but not until after March 1, 1914.

N. C. INGRAM.

Subscribed and sworn to before me this 11th day of March, 1914.

(Seal)

CHARLES E. McCULLOCH,

Notary Public for Oregon.

State of Oregon,

County of Multnomah,—ss.

W. F. McKinnon, being first duly sworn, on oath deposes and says:

That he is a resident of Portland, Oregon, and is a timber estimator by profession; that he has been engaged in the business of cruising or estimating timber and its accessory branches for eight years; that on or about January 8, 1913, he entered the employ of the Nease Timber Company which had a contract with Clackamas County, Oregon, for the cruising of standing timber in said County; that he entered upon the performance of his duties in said County on or about January 8, 1913, and worked substantially continuously thereafter estimating timber in said Company until about May 10, 1913; that all of the work done by him in Clackamas County was done under the personal direction and supervision of M. G. Nease, who at that time was the manager of the Nease Timber Company, and who directed all of the work of cruising the timber in Clackamas County; that instructions as to the method of estimating timber were given to affiant by M. G. Nease;

that affiant was instructed to cover at least three hundred and twenty acres per day, but averaged about six hundred and forty acres per working day during his employment in Clackamas County; that in heavily timbered districts verbal instructions were given by M. G. Nease to go through each forty-acre tract but once, and in other districts less heavily timbered that affiant should use his own judgment; that in the less heavily timbered sections, the estimating was done by affiant by running along the forty lines; that affiant was paid by the day of work done in Clackamas County.

That on or about May 13, 1913, affiant with one C. F. Corgan, a timber cruiser, went to Astoria with M. G. Nease for the purpose of entering upon the work of cruising timber in Clatsop County, Oregon, with which County the Nease Timber Company had a contract. Under the terms of this contract the Nease Timber Company was to receive the sum of twelve and one-half cents per acre for all timber cruised; that affiant and said Corgan, each accompanied by his compass man, left Astoria for the woods on May 14; that upon leaving Astoria, said M. G. Nease handed to affiant and Corgan a letter of instructions as to the method of estimating timber in Clatsop County; that affiant proceeded to cruise timber in accordance with said instructions for about thirty days, and during said time averaged about four or five forties per day; that during all of this time the work was thoroughly done, a double run being made of each heavily timbered forty; that affiant

and Corgan having completed the assignment of work given them by said Nease, went to Astoria about June 13, and there met said Nease and turned in to said Nease the reports of the work done during said period of thirty days; that during all of said period of thirty days affiant and Corgan believed that they were to be paid by the day, which had been the method of payment in Clackamas County; that on or about June 14, affiant and said Nease and Corgan, having proceeded to Seaside, in Clatsop County, Oregon, entered into an agreement whereby the affiant and Corgan were to receive the sum of four cents per acre for all timber cruised by them in Clatsop County, including the timber previously cruised in said County; that out of the said sum of four cents per acre, affiant and said Corgan were to pay and subsequently did pay their respective compass men and subsistence; that the written instructions given to affiant at Astoria on entering the woods on May 14th, were superseded by verbal instructions given to the affiant and said Corgan at Seaside at the time of entering into said contract with Nease Timber Company by which the work was to be done for four cents per acre. During said conference said Nease informed affiant that other cruisers working in Clatsop County for said Nease Timber Company were averaging three hundred and twenty acres per day and more, and that there would be no objection to affiant and said Corgan covering this amount of ground. Affiant thereupon asked said Nease if payment would be made covering ground in excess of three hundred

and twenty acres per day covered by affiant and said Corgan, and was informed that payment would be made for such extra ground covered to allow for moving days; that except for about a week in the middle of July, affiant worked practically continuously from June 16, 1913, to August 31, 1913, and during said period averaged about four hundred and eighty acres per working day; that after June 16, 1913, affiant in cruising said timber went through each forty but once; that it would have been impossible to make a thorough and accurate cruise by this method; that said Corgan followed substantially the same method in cruising timber in Clatsop County as affiant.

W. F. McKINNON.

Subscribed and sworn to before me this 12th day of March, 1914.

(Seal)

CHARLES E. McCULLOCH,
Notary Public for Oregon.

I, A. Orburn, being first duly sworn, do say under oath, that after checking up the cruise made by the Nease Timber Company in Clatsop County, Oregon, on 600 acres in Tp. 6-8. This land being owned by myself and other parties. I found that the timber on this land was over cruised 13,705,000 (Thirteen million, seven hundred and five thousand feet) this was too much excess for small holders to pay taxes on, so myself and those associated with me in the land went before the board of equalization at the time prescribed by law and entered protest, submitting to the board our cruises on each parcel of land, these cruises

were made by some of the best known timber men in the State, and we also had the sworn statements taken of several well known local timber men and loggers who had cruised the land and who supported our figures under oath, I also made a sworn statement as I have counted the trees on all timber lands I am interested in and know enough about timber that Nease cruises could not be correct. The board seemed somewhat impressed with our showing and agreed to have the land re-checked admitting that almost all timber owners in Tp. 6-8 had entered complaint, later the board turned down flat all protests, but acting on their promise to have our land re-checked we did not appeal to the Circuit Court within the time (5 days) prescribed by law.

As far as I know the County rechecked only one piece of our land the N. W. $\frac{1}{4}$ section 11, Tp. 6-8, containing 160 acres on which Nease Timber Co. reported yellow Fir 2,600,000, Hemlock 5,100,000, Spruce 3,400,000, total 11,100,000 feet. Mr. John W. McKay, head timber cruiser for Nease, and O. S. Boyle, head man employed by the County to follow after Nease men and "check them up," recrused the claim (I might mention that in the last County cruised by Nease, O. S. Boyle was his head man, and he is still a Nease man) this recruse was yellow Fir 2,-698,000, Hemlock 3,642,000, Spruce 5,785,000, Cedar 50,000. Total 12,175,000 feet. Hence it was reported around that the County and Nease "had one" on Osborn.

The Judge sent out Mr. Daniel Gillies to South

Bend, Wash., along to cruise the claim. Mr. Gillies is one of the best in the business, and had been one of the several who had been mentioned as a party who would be O. K. with us. Mr. Gillies made a careful cruise in 10-acre tracts and brought in a report of Yellow Fir, 646,000, Hemlock, 1,717,000, Spruce, 3,266,000, Cedar, 19,000, Totals 5,648,000 feet, or a difference of 6,527,000 less than the cruise made by McKay and Boyle for Nease (we had offered to pay taxes on 6,380,000 feet which is a little above the Gillies cruise).

Daniel Gillies was held under his bond of \$1000.00, Messrs. McGregor and Patton being on his bonds, until he should prove himself right as against O. S. Boyle, also under bonds, and McKay, head man for Nease. So on February 12, 1914, John W. McKay and O. S. Boyle, representing Nease, W. R. Chisholm, representing the owners, and Daniel Gillies, under bonds, also a compass man, in all five men, went out and cruised the 160 acres in five-acre tracts, and counted all yellow fir, spruce and cedar trees, the Hemlock was not cruised. After four days work, the following report was made and signed by all four men: Yellow Fir 670,000, Spruce 3,158,000, Cedar 25,000. Total for the three kinds 3,843,000 as against 8,533,000 feet for the same three kinds as made by McKay and Boyle. These two men admitted themselves wrong, claimed as excuses, too much fog when cruising before, had taken hemlock for fir and spruce, had overlapped each other's work, and that their compass man had put them on the wrong land, and all

very lame excuses for reliable timbermen. Boyle paid expenses of the cruise, and before leaving for Astoria McKay is reported to have told a friend of the writers, that Osborn had been bucking the County and we tried to "stick him." I have proven Messrs. McKay and Boyle careless and incompetent and the entire bunch crooked. If the above about "sticking me" is correct, Nease is not competent, he does not know the business in which he is engaged, he is not a woodsman, and depends on others altogether, and he does not know when they are doing good or poor work, besides he does not pay his men for good work, no man living can cruise for 4 cents per acre.

The Nease cruises in Tp. 6-8, is not even a good "guess." If I had a timber reported by Nease, it would be worth thousands of dollars more to me, and I would not be kicking, and I am not making false statements under oath were I not sure of my footing.

The contract entered into "in haste" between Nease and this County does not have a fair word for the timber owners. It is all for Nease, unless his cruises are shown over 20%, they are right, this is too much difference, good men can agree within 5 or 10% in cruises, and in the cruise just mentioned Mr. Gillies cruised within .123% being the difference between his first and final cruise. The contract allows all land with as little as 2,000,000 feet to 640 acres to be cruised, and all green timber 20 inches in diameter at the stump and 12 inches at the top, this allows Nease to cruise for the purpose of taxa-

tion a small worthless hemlock, that has no commercial value now, and will not have for many years, also logged off land. The timber industry is of too much importance to be burdened and discouraged like this.

I am not employed by any timber concern, and expect to fight this through and prove myself right as against Nease cruises.

A. OSBURN.

Subscribed and sworn to before me this 12th day of March, 1914.

(Seal)

J. BENNETT,
Notary Public for Oregon.

State of Oregon,
County of Multnomah,—ss.

J. P. HAGADONE, being first duly sworn, on oath, deposes and says:

That he is a resident of Portland, Oregon, and that he is a timber estimator by profession; that he has been engaged in the business of cruising or estimating timber and its accessory branches for over twenty-five years, of which thirteen years have been spent in such work in Oregon and Washington, but mostly in Oregon; that early in the year 1913, he entered the employ of M. G. Nease Timber Company, which had a contract with Clackamas County, Oregon, for the cruising of standing timber in said County; that he entered upon the performance of his duties in said County on or about April 1, 1913, and continued to work estimating the timber in said County until about the 18th or 20th of April, 1913;

that all of the work done by him in Clackamas County was done under the personal direction and supervision of M. G. Nease, who at that time was the Manager of Nease Timber Company, and who directed all of the work of cruising the timber in Clackamas County; that typewritten instructions as to the methods of estimating timber were given to affiant by M. G. Nease, and that afterwards M. G. Nease directed affiant to get over as large a tract as possible each day and in no event less than three hundred and twenty acres a day; that affiant averaged not less than eight or nine forty-acre tracts each day during his employment in Clackamas County; that verbal instructions from said M. G. Nease were to go through each forty-acre tract but once; and that affiant was paid by the day for the work done in Clackamas County.

That thereafter and about the first of May, 1913, affiant began work cruising timber in Clatsop County, Oregon, for Nease Timber Company, which had a contract with Clatsop County for the cruising of all timber in said County, under which the Nease Timber Company was to receive as pay—and subsequently did receive twelve and one-half cents ($12\frac{1}{2}$) per acre for such work; that the typewritten instructions given him by the Nease Timber Company with regard to said cruise were substantially the same as those given to him in Clackamas County, and would have resulted in a more thorough cruise than was made; that after affiant had received typewritten instructions for Clatsop County, said M. G. Nease, as

manager of the Nease Timber Company, gave to him verbal instructions superseding the written instructions, which verbal instructions were substantially the same as the verbal instructions received by affiant in connection with the Clackamas County cruise; that during the time of his employment in Clatsop County, which ended in the early part of June, 1913, affiant cruised substantially eight or nine forty-acre tracts per day; that in making said cruise he went through each forty-acre tract but once in accordance with the verbal instructions given by M. G. Nease; that in order to attain the average which he attained in Clatsop and Clackamas Counties, it was possible to go through each forty-acre tract but once, and a thorough cruise under such circumstances was impossible.

JAS. P. HAGADONE.

Subscribed and sworn to before me this 12th day of March, 1914.

(Seal)

OSCAR FURUSET,
Notary Public for Oregon.

State of Oregon,
County of Multnomah.—ss.

H. N. PRICE, being first duly sworn, on oath, deposes and says:

That he is a resident of Sifton, Clarke County, Washington; that for more than twenty years last past he has been engaged in the business of estimating timber; that for five years of said period he was employed by the State of Washington in estimating

timber; that during the year 1913, for E. S. Collins of Ostrander, Washington, he made a cruise of certain lands hereinafter described, said lands being situated in Clackamas County, Oregon; that said cruise was carefully and accurately made, and the figures hereinafter set out accurately show the timber standing in each forty acres of the land so cruised at the time of the cruise; that this cruise was made in the fall of 1913.

Cruise of Timber in Township 6 South, Range 3 East, Clackamas County, Oregon:

	M ft.	M ft.	M ft.	M ft.	M ft.
Section 14	Hemlock	Cedar	Larch	Fir	Pine
NW of SW	725	35		1800	
NE of SW	750	40		2000	
SE of SW	350			2200	
SW of SW	500	15		2400	
NW of SE	500	30		3000	10
NE of SE	250	60	40	2400	100
SE of SE	250	150	400	1500	15
SW of SE	200	20	30	1400	10
Totals	3525	330	470	16700	135

	Hemlock	Cedar	Larch	Fir	Pine
Section 22	M ft.	M ft.	M ft.	M ft.	M ft.
NE of NW	40	25		1400	
NW of NE	275	10		1250	
NE of NE	325			1600	
SE of NE	300			1500	10
SW of NE	250			1500	

The County of Clearwater, Idaho, et al. 81

NW of SE	500		1900	
NE of SE	250	10	1400	
SE of SE	350	10	2900	
Totals	<u>2290</u>	<u>55</u>	<u>13450</u>	<u>10</u>

Section 24	Fir	Hemlock	Pine	Cedar
NW of SW	750	750		
NE of SW	750	750		
SE of SW	2200	700		
SW of SW	2000	700		
NW of SE	500	700		
NE of SE	600	600	10	
SE of SE	2000	700		5
SE of SE	1800	800		
Totals	<u>10600</u>	<u>5700</u>	<u>10</u>	<u>5</u>

	Fir	Hemlock	Cedar	Pine
Section 26				
NW of NW	1600	400	10	
NE of NW	1000	350		
SE of NW	1400	800		
SW of NW	1500	450	15	
NW of NE	2300	275		
NE of NE	1500	700		10
SE of NE	1400	750		
SW of NE	1550	475		20
NW of SE	975	500		
NE of SE	1100	1000		
SE of SE	950	1100		
SW of SE	1950	550		

82 *Dexter Horton Trust & Savings Bank vs.*

NW of SW	850	1100		15
NE of SW	1100	1000		10
SE of SW	700	1000		20
SW of SW	2000	375		
	<hr/>	<hr/>	<hr/>	<hr/>
Totals	21875	10825	25	75

	Fir	Memlock	Larch	Pine
Section 36				
NW of NW	1500	800		
NE of NW	2000	400	50	
SE of NW	1100	500		
SW of NW	1300	600		
NW of NE	1850	500	10	10
NE of NE	1000	900	10	10
SE of NE	600	1000	25	25
SW of NE	1200	230	15	
NW of SE	950	150	10	
NE of SE	400	500		10
SE of SE	75	100		
SW of SE				
NW of SW	125	650		
NE of SW	400	400		
SE of SW				
SW of SW	75	400		
	<hr/>	<hr/>	<hr/>	<hr/>
Totals	12575	7150	120	55

H. N. PRICE.

Subscribed and sworn to before me this 13th day
of March, 1914.

CHARLES E. McCULLOCH,
(Seal.) Notary Public for Oregon.

Copy of Timber Cruise in Township 6 South of
Range 3 East of Willamette Meridian, Clackamas
County, Oregon:

South Half Section 14, 6 S. R. 3 E.

Yellow Fir,	36,000,000 feet
Cedar,	830,000 feet
Hemlock,	13,900,000 feet
Pine,	120,000 feet
<hr/>	
Total,	50,850,000 feet

NE $\frac{1}{4}$ and NE $\frac{1}{4}$ of NW $\frac{1}{4}$ and NW $\frac{1}{4}$ of SE $\frac{1}{4}$ and
E $\frac{1}{2}$ of SE $\frac{1}{4}$ Sec. 22, 6 S. R. 3 E.

Yellow Fir,	21,390,000 feet
Red Fir,	650,000 feet
Hemlock,	4,850,000 feet
<hr/>	
Total,	26,890,000 feet

South Half Section 24, 6 S. R. 3 E.

Yellow Fir,	9,570,000 feet
Red Fir	2,520,000 feet
Hemlock,	6,760,000 feet
Larch,	150,000 feet
<hr/>	
Total,	19,000,000 feet

All of Section 26, 6 S. R. 3 E.

Yellow Fir,	37,270,000 feet
Hemlock,	14,600,000 feet
<hr/>	
Total,	51,870,000 feet

All of Section 36, 6 S. R. 3 E.

Yellow Fir, 17,338,000 feet

Hemlock, 15,590,000 feet

Total, 32,928,000 feet

State of Oregon,

County of Clackamas.—ss.

I, J. E. Jack, County Assessor, of the above named County and State, do hereby certify that the foregoing copy of Timber Cruise has been by me compared with the original, and that it is a correct copy therefrom, and the whole of such original Cruise as the same appears of record in my office and in my care and custody.

In testimony whereof, I have hereunto set my hand this 13th day of March, 1914.

J. E. JACK,

(Seal.)

County Assessor.

State of Oregon,

County of Clackamas.—ss.

I, W. L. Mulvey, County Clerk and ex-officio Clerk of the Circuit Court of the State of Oregon for the County of Clackamas, do hereby certify that J. E. Jack is the duly elected, qualified and acting County Assessor of Clackamas County, Oregon; that the signature to the within certificate is his genuine signature.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 13th day of March, A. D. 1914.

W. L. MULVEY, Clerk,

(Seal.)

By J. M. Harrington, Deputy.

IN THE CIRCUIT COURT OF THE STATE OF
OREGON FOR THE COUNTY OF
CLACKAMAS.

THE STATE OF OREGON,

Plaintiff,

vs.

ISAAC GRATTON and M. G. NEASE,

Defendants.

INDICTMENT.

Isaac Gratton and M. G. Nease are accused by the Grand Jury of the County of Clackamas, in the State of Oregon, by this indictment, of the crime of wilfully committing an act which grossly disturbs the public peace, openly outrages the public decency and is injurious to public morals, committed as follows:

That said defendants on the 6th day of June, A. D. 1905, and thence continuously until the first day of November, 1905, in the County of Clackamas and State of Oregon, did then and there unlawfully, wilfully and wrongfully commit an act which grossly disturbed the public peace, openly outraged the public decency and was injurious to public morals, in that the said defendants did then and there unlawfully, wilfully and wrongfully for gain habitually sell pools upon horse races, and habitually procure idle and evil-disposed persons to come together and congregate within the house of defendants to buy pools and bet money upon horse races, to the great damage, common nuisance and annoyance of the public, contrary to the Statute in such cases made and provided,

and against the peace and dignity of the State of Oregon.

Dated at Oregon City, in the County of Clackamas and State of Oregon, the 13th day of November, A. D. 1905.

HARRISON ALLEN,
District Attorney.

WITNESSES: Ben Irwin, Philip Streib, C. W. Carlson, C. Ballard, William Schindler, Clyde M. Watson, George H. Mooney, John R. Kelso, R. W. Parshley, Nelson A. Cooper, Harry Iancovici, John R. Shaver.

Filed November 13th, 1905.

F. W. Greeman, Clerk.

IN THE CIRCUIT COURT OF THE STATE OF
OREGON FOR THE COUNTY OF
CLACKAMAS.

STATE OF OREGON,

Plaintiff,

vs.

ISAAC GRATTEN and M. G. NEASE,

Defendants.

Now at this day, comes the State of Oregon by Harrison Allen, District Attorney, and the defendant above named in person and by his attorney Geo. C. Brownell, and this being the time heretofore fixed by the court for said defendant to answer the indictment herein charging him with the crime of committing an act that disturbed the public peace, he having been heretofore arraigned on said indictment,

waives further time and pleads that he is guilty of the crime charged herein, and being asked by the court if he had anything to say why judgment should not be pronounced against him, answered showing no good or sufficient cause and requested the court to pass sentence at this time.

It is therefore ordered and adjudged by the court that said Isaac Gratten and M. G. Nease be fined the sum of \$100.

Entered in the Circuit Court Journal No. 23, page 284. November 15th, 1905.

(Seal.)

State of Oregon,
County of Clackamas.—ss.

I, W. L. Mulvey, County Clerk and ex-officio Clerk of the Circuit Court of the State of Oregon, for the County of Clackamas, do hereby certify that at a Special Recall Election held in Clackamas County on August 16, 1913, R. B. Beatie, County Judge and N. Blair, County Commissioner, were recalled, and that at said election H. S. Anderson was elected County Judge in place of R. B. Beatie, and J. W. Smith was elected County Commissioner in place of said N. Blair; that said H. S. Anderson is now the duly elected, qualified and acting County Judge, and said J. W. Smith is now the duly elected, qualified and acting County Commissioner of said Clackamas County, Oregon.

I further certify that attached hereto and marked "Exhibit A" is a true copy of the Recall Petition duly filed in my office on July 22nd, 1913, and now

in my care and custody, asking for the recall of said R. B. Beatie and that said recall petition contains 1749 signatures.

I further certify that attached hereto and marked Exhibit "B" is a true copy of the Recall Petition duly filed in my office of July 22, 1913, and now in my care and custody, petitioning for the recall of said N. Blair; that said recall petition contains 1729 signatures.

I further certify that said election of August 16, 1913, was duly and regularly called and held pursuant to the said recall petitions so filed on July 22nd, 1913.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the County Court this 12th day of March, A. D. 1914.

W. L. MULVEY, County Clerk,
(Seal.) By J. M. Harrington, Deputy.

"EXHIBIT A"

RECALL PETITION.

*To the Honorable W. L. Mulvey, County Clerk of
Clackamas County, Oregon:*

We, the undersigned citizens and legal voters of the State of Oregon, and of the County of Clackamas, respectfully demand the recall of County Judge, R. B. Beatie, of said Clackamas County, Oregon, and each for himself says "I have personally signed this petition; I am a legal voter of the County of Clackamas and State of Oregon; my residence and post-office are correctly written after my name."

The following are the reasons for making demand:

That the said R. B. Beatie in the conduct of his office as County Judge has been careless and extravagant in the management of the County business, and in proof we cite the following facts:

(1) That the sum of \$350.00 was paid for an examination and report on the condition of the Oregon City Suspension Bridge without inviting competition.

(2) That the bridge across Clear Creek at Stone was destroyed and replaced by a new steel bridge, which was wholly uncalled for, as the old bridge was in good condition when destroyed. All it needed was new piers and a few minor repairs at slight expense.

(3) That many steel bridges were built without due publicity and without asking for competitive bids.

(4) That a contract was entered into with a Portland timber cruising company to cruise the timber of Clackamas County at the rate of \$51.20 per section, without giving any notice to the public that such contract was to be let.

(5) That said R. B. Beatie, as chairman of the County Court has not complied with Section 6278 Lords Oregon Laws.

Filed July 22, 1913.

W. L. Mulvey, County Clerk.

“EXHIBIT B.”

RECALL PETITION.

*To the Honorable W. L. Mulvey, County Clerk of
Clackamas County, Oregon:*

We, the undersigned citizens and legal voters of the State of Oregon for the County of Clackamas, respectfully demand the recall of County Commissioner N. Blair, of said Clackamas County, Oregon, and each for himself says: “I have personally signed this petition; I am a legal voter of the County of Clackamas and State of Oregon; my residence and postoffice are correctly written after my name.”

The following are the reason for making said demand:

That the said N. Blair in the conduct of his office as County Commissioner has been careless and extravagant in the management of the county business, and in proof we cite the following facts:

(1) That the sum of \$350.00 was paid for an examination and report on the condition of the Oregon City Suspension Bridge without inviting competition.

(2) That the bridge across Clear Creek at Stone was destroyed and replaced by a new steel bridge, which was wholly uncalled for, as the old bridge was in good condition when destroyed. All it needed was new piers and a few minor repairs at slight expense.

(3) That many steel bridges were built without due publicity and without asking for competitive bids.

(4) That a contract was entered into with a Portland Timber Cruising Company to cruise the timber of Clackamas County at the rate of \$51.20 per section, without giving any notice to the public that such contract was to be let.

(5) That said N. Blair, as member of the County Court has not complied with Section 6278 Lords Oregon Laws.

Filed July 22, 1913.

W. L. Mulvey, County Clerk.

"EXHIBIT 8."

Orofino, Idaho, Apr. 14, 1914.

*To the Honorable Board of County Commissioners
of Clearwater County, Idaho.*

Gentlemen: In relation to contract for the cruising and estimating of lands between Clearwater County and M. G. Nease, bearing date of Feb. 24, 1914, referred to on page 391 of Book No. 1 Minutes of the Proceedings of the Board of County Commissioners of Clearwater County, beg leave to advise you that I consent to a cancellation of said contract and do hereby waive all of my rights thereunder.

Very truly yours,

M. G. NEASE.

Endorsed: Filed April 15, 1914.

Joseph Kauffman, Clerk Co. Com. By F. N. Shreve, Deputy.

"EXHIBIT 9."

P. H. BLAKE,
COUNTY ASSESSOR.
CLEARWATER COUNTY, IDAHO.
OROFINO, IDAHO.

April 15, 1914.

*To the Honorable Board of County Commissioners
of Clearwater County, Orofino, Idaho.*

Gentlemen: As you are aware, I have at numerous times in the past taken up with you the matter of the proper assessment of the lands of this county, and particularly the proper assessment of the timbered lands.

As county assessor I am required by law to assess all lands in the county subject to taxation at their "true cash value."

The assessor's office of this county has no records, information or data that will enable the assessor to determine for assessment purposes the "true cash value" of the timbered lands of this county.

As you well know, the major portion of Clearwater County is a rough and mountainous country on which is growing different varieties of timber of varying density, and the lines of sub-divisions are difficult to locate. The only manner of determining the value of timber lands is by having a reliable cruise of them made; which cruise should show the quantity and quality of various kinds of timber on each sub-division.

The burden of taxation is unequally distributed in this county, as there are vast areas of timber land escaping their just share of taxation.

I therefore recommend and request that you take such steps as you deem advisable to cause all of the timbered lands of this county subject to taxation to be cruised in a careful manner and reliable records of such cruising furnished to this office for the use and benefit of the assessor.

It is absolutely necessary that these lands be reliably cruised and records of such cruisings furnished this office to enable the assessor to comply with the law.

Respectfully yours,
(Signed) P. H. BLAKE,
County Assessor.

Endorsed: Filed 4-15-1914.

Joseph Kauffman, Clerk Co. Com. By F. N. Shreve, Deputy.

"EXHIBIT 10."

Orofino, Idaho, April 15, 1914.

To the Honorable Board of Commissioners, Clearwater County, Idaho.

Gentlemen:

I beg to submit for your consideration the following proposal for the examination of the patented lands subject to taxation situate in Clearwater County.

I will examine and cruise the patented lands situated in Clearwater County between this date and such reasonable date as may be required by your board at and for the price of twelve and one-half ($12\frac{1}{2}$) cents per acre.

I will give a bond in some surety company qualified to do business in this State in such reasonable sum as the County Commissioners may require, said bonds to provide for the faithful performance of the terms of the contract to be entered into between the County of Clearwater and myself.

The examination, cruise and report included in this proposal will show the quantity of all timber on each governmental sub-division, including a full description of the timber as to size, number of logs per tree, percentage of surface clear timber, damage by fire or otherwise, and the probabilities of fire; will describe logging conditions, showing accessibility of timber to market, and the best manner of handling same.

My reports will show the general topography of all lands examined and cruised. The topography maps will be sketched to show all openings, clearings, burns, marshes, lakes, rivers, creeks, trails, roads, waterfalls, coal, valuable stone, mineral outcroppings and all other topographic features usually observed by cruisers. Will furnish land classification maps showing a general description of the surface and soil on all lands examined, these maps to describe the adaptibility of the lands, for agricultural, grazing or other purposes after the timber is removed, all reports to show the elevation of all lands cruised and examined, these elevations to be taken by means of an Aneroid barometer. Upon a witness tree at each section corner located will mark with an ax the letter "N" in such manner as to be easily identified.

This proposal is to be construed as covering everything necessary to make a complete estimate of the timber and a description of all lands cruised and examined, and to include any features which in the judgment of your board would be a benefit and value to Clearwater County.

In case the contract should be entered into between the County of Clearwater and myself, I will employ none but the most competent cruisers and assistants, and will not sub-contract any part of the work, and will make a very careful cruise and comprehensive report on all lands examined.

All reports shall be made in such form as shall meet the approval of the County Commissioners of Clearwater County.

Respectfully submitted,

(Signed) M. G. NEASE.

Filed 4-15-1914. Joseph Kauffman, Clerk Co. Com. By F. N. Shreve, Deputy.

“EXHIBIT 11.”

THIS AGREEMENT, Made and entered into this 15th day of April, A. D. 1914, by and between the County of Clearwater, a municipal corporation of the State of Idaho, acting through Frank Zelenka, Elmer O. Torgerson and Frank Harrison, the legally qualified and acting members of the Board of County Commissioners in, of and for said county, party of the first part, and M. G. Nease, of Portland, Oregon, party of the second part.

WITNESSETH: That for the consideration hereinafter provided, to be made and paid to the second party by the first party, the second party hereby covenants, contracts and agrees,

1.

That he will make and cause to be made a careful, complete and thorough cruise and estimate of all the timber on patented lands situated in Clearwater County, Idaho; said cruise to be completed on or before the 15th day of June, 1915, excepting such of said lands as the first party may from time to time withdraw from this contract, that is to say there are certain lands in Clearwater County, of which the assessor knows the true cash value without the necessity of having a cruise thereon, and the first party shall have the right to withdraw such lands from time to time prior to the cruising of same, and the lands so withdrawn shall not be cruised.

2.

That upon said cruise being made from time to time, the second party agrees to make reports of said cruise, said reports to contain topographic sketches showing the elevation of lands above sea level, taken by means of Aneroid barometers, said reports to show all openings, burns, marshes, rivers, lakes, creeks, trails, roads, waterfalls, valuable stone, mineral outcroppings and all other topographic features observed by the cruisers, said reports and sketches to show a general description of the character of the lands cruised, describing its adaptability for agri-

culture, grazing or other purposes after the timber is removed, said reports to describe the character of the different varieties of timber, giving the average stump diameter, the average number of 16-foot logs per tree, the percentage of surface clear timber, said reports to describe logging conditions, showing distance to outlet such as railroads or driving streams; said reports to show damage by fire or otherwise, and the probability of fire, and will furnish all blue prints, blanks and binders for reports at his own expense, and all reports herein agreed to be furnished to said first party shall be upon such quality of paper and of the size and form and contain all data above provided accordingly as shall meet the approval of said first party.

3.

That in making said cruise the second party shall use as a basis in estimating saw timber all trees having not less than a 12-inch stump diameter to an 8-inch top, and as a basis in estimating cedar poles all cedar trees not included as saw timber which have a top diameter of not less than six inches 25 feet above the stump, all fir and tamarack which shall not be classed as saw timber shall be designated and counted as ties, and for this purpose a tie shall be considered as being eight feet long and of standard dimensions.

4.

The second party shall also as a part of this contract furnish and file with the Board of County Com-

missioners of Clearwater County, a bond with surety to the satisfaction and approval of the first party in the sum of Ten Thousand Dollars, which shall provide that the second party shall faithfully perform all the terms and conditions of this contract on his part to be done and performed, which bond shall continue and be in force and effect from the 15th day of April, 1914, up to and until the 1st day of October, 1915, and no money shall be paid to the second party under the terms of this contract until such bond shall be filed and approved by the said first party.

5.

In consideration of the true and faithful performance by the second party of the terms and conditions of this contract on his part required to be done and performed, the first party agrees to pay to the said second party or to his order or assign, a sum equal to twelve and one-half ($12\frac{1}{2}$) cents per acre, for all lands cruised and reported on by said second party, accordingly as aforesaid, which shall be accepted and approved by the first party as follows, that is to say:

That at each regular term of the Board of County Commissioners or at a special meeting called for this purpose by said Board of County Commissioners of said County during the life of this contract, said Board of County Commissioners shall examine, accept or reject all reports filed by the second party prior to said meeting and shall

Then give to the second party or to his order or assigns, an acceptance or rejection in writing, as the

case may be, of the said reports, and all acceptances shall state and specify the amount due the second party for said work; and shall at each meeting as above provided, order to be issued to the second party or his order or assigns, county warrants drawn on the current expense fund for an amount equal to 80% of the amount due the second party as shown by the accepted reports, the remaining 20% shall be paid to the second party or his order or assigns within 60 days after the completion of the contract and the acceptance of the work.

6.

It is further agreed by and between the parties hereto, that in case any cruise made by the second party as shown by his reports shall be disputed and the owner of the timber so cruised desires to have the same recruised, and the Board of County Commissioners of Clearwater County, shall make demand therefor, that both parties to this contract shall select some competent cruiser satisfactory to both parties, and the cruiser so selected shall go over and cruise the tract or tracts in dispute, and the cruise of the party so selected shall be taken as final. If the cruise of the party so selected as arbitrator varies more than 20% above or below the cruise of the second party, then the compensation of said arbitrator and expense of said recruise shall be paid by the said second party, but in case the cruise of the arbitrator shall not be more than 20% above or below the cruise of the second party, then the compensation of said ar-

bitrator and expense of said recruise shall not be paid by the second party.

7.

It is further stipulated and agreed, that all cruises that shall be rejected by the first party shall be corrected and the proper report and correct cruise of the land included therein shall be made by the second party accordingly as directed by the first party, and if the second party fails so to do, the first party shall have the right to cause the same to be cruised and the reports accordingly as hereinbefore agreed to be made, and the cost and expense thereof above twelve and one-half cents per acre shall be paid by the second party to the first party on demand, and the payment thereof shall be secured by the bond filed herewith.

8.

The second party hereby agreed that he will not sub-contract any part of the work to be done under the terms of this contract.

IN WITNESS WHEREOF, The parties hereto have caused these presents to be executed in duplicate copy, the first party, Clearwater County of the State of Idaho, by its Board of County Commissioners, pursuant to an order of the Board of County Commissioners of said County, this day duly adopted and passed, authorizing the execution of this instrument, together with the seal of said county, and the second party, M. G. Nease, all done on the day and year first above written.

CLEARWATER COUNTY OF THE STATE OF
IDAHO.

By FRANK ZELENKA,
Chairman of Board of County Commissioners.
(Seal)

ELMER O. TORGERSON,
County Commissioner.

FRANK HARRISON,
County Commissioner.

Executed in the presence of

R. G. FARIS,

I. R. CROW,

Witnesses.

Attest:

JOSEPR KAUFFMAN,

Clerk of Board of County Commissioners.

Endorsed: 6939 Contract of Clearwater County and M. G. Nease. Filed Apr. 15, 1914. Joseph Kauffman, Clerk Co. Com. By F. N. Shreve, Deputy.

“EXHIBIT 12.”

Orofino, Idaho, February 24th, 1914.

*To the Honorable Board of County Commissioners of
the County of Clearwater, State of Idaho:*

Gentlemen:

In answer to your question as to whether your Honorable Board of County Commissioners of Clearwater County, Idaho, have authority to make and enter into a contract for cruising some three (3) Townships of Timber lands in said County for the purpose of furnishing the County Assessor of said County with sufficient information as to the class

and character of the timber and soil in said Townships to be used as a basis for the assessment of the timber lands of said County, for the purpose of taxation.

I beg to advise you that we have no express statute in the State of Idaho, authorizing such a contract; however, taking into consideration and construing all of our Statutes bearing upon the powers and duties of your Honorable Board in the furtherance of a just and equitable basis for the assessment of taxes and the equalization of the same; in my opinion the Board of County Commissioners would be justifiable and warranted in making and entering into such a contract having at all times the best interest of the taxpayers in view, first and last, and to that end I would suggest that your Honorable Board draft plans and specifications clearly setting forth the kind and character of the work to be performed and making all the necessary stipulations therein, tending to inform the bidder as to what you fully expect of him, so that he may be able to have a basis upon which to figure for his services or compensation, also requiring the successful bidder to execute a good and sufficient bond for the faithful performance of the contract, and also require the party bidding on such work to be thus awarded by contract to submit with their bid satisfactory evidence of their ability to make a satisfactory cruise, etc., and also to require from each bidder an affidavit to the effect that he is not in any way either directly or indirectly connected with or under the influence of any Timber Company,

or any other person or persons owning or controlling Timber lands in the County of Clearwater, State of Idaho.

Therefore, it is my opinion that a contract made and entered into by you under the foregoing statements, and which is not made as against public policy, would be legal and would meet with the hearty indorsement of the taxpayers and good citizens of Clearwater County, Idaho.

Most respectfully submitted this the day and year first above written.

ALLEN A. HOLSCLAW,
Prosecuting Attorney.

Endorsed: 6495 Opinion of County Attorney in relation of Cruising Timber and entering into Contract. Filed February 24, 1914. Joseph Kauffman, Clerk Co. Com. By F. N. Shreve, Deputy.

"EXHIBIT 13."

AMERICAN SURETY COMPANY
of New York.

KNOW ALL MEN BY THESE PRESENTS;
That M. G. Nease, of Portland, State of Oregon, (hereinafter called the Principal), as Principal, and the AMERICAN SURETY COMPANY OF NEW YORK, a corporation organized under the laws of the State of New York, (hereinafter called the Surety), as Surety, are held and firmly bound unto CLEARWATER COUNTY of the State of Idaho (hereinafter called the Obligee) in the sum of TEN THOUSAND (\$10,000.00) for the payment where-

of to the said Obligee, the Principal binds itself, its successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Principal has entered into a certain contract in writing, bearing date of April 15, 1914, with the said Obligee to make a careful, complete and thorough cruise and estimate of all the timber on the patented lands situated in Clearwater County, Idaho; and to make a report upon all lands cruised, in accordance with the provisions and conditions of said contract, a copy of which is hereto attached, and is hereby referred to and made a part hereof.

NOW, THEREFORE, the condition of this obligation is such, that if the Principal shall indemnify the Obligee against any loss or damage directly arising by reason of the failure of the Principal to faithfully perform said contract then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, however, and upon the EXPRESS CONDITIONS, the performance of each of which shall be a condition precedent to any right of recovery hereon;

First: That no claim, suit or action by reason of any default shall be brought against the Principal or Surety after the 1st day of October, 1915, nor shall recovery be had for damages accruing after that date; that service of writ or process commencing any such suit or action shall be made on or before such date; that the Principal shall be made a party to any such suit or action, and be served with process com-

mencing the same if the Principal can with reasonable diligence be found; that no judgment shall be rendered against the Surety in excess of the penalty of this instrument.

Second: That no right of action shall accrue upon or by reason hereof, to or for the use or benefit of any one other than the Obligee herein named; and that the obligation of the Surety is, and shall be construed strictly as, one of suretyship only, shall be executed by the Principal before delivery, and shall not, nor shall any interest therein or right of action thereon, be assigned without the prior consent, in writing, of the Surety.

SIGNED AND SEALED this 15th day of April,
A. D. 1914. M. G. NEASE.

AMERICAN SURETY COMPANY OF NEW
YORK. By EDWARD L. GAFFNEY,
(Seal) Resident Vice-President.
W. A. KING,
Resident Ass't Secretary.

Countersigned:

J. W. BLAKE,
Agent American Surety Company,
Orofino, Idaho.

Attest:

W. A. KING,
Resident Ass't Secretary.

Endorsed: Examined and approved this 6th day of June, 1914, Frank Zelenka, Chairman. Filed May 18, 1914, Joseph Kauffman, Clerk Co. Com. By F. N. Shreve, Deputy.

"EXHIBIT 15."

Before the Board of Commissioners of Clearwater County, Idaho.

In the matter of the Acceptance April 15, 1914, by the Board of Commissioners of Clearwater County of the Proposal of M. G. Nease to the said Board, dated April 15, 1914.

NOTICE OF APPEAL.

To Joseph Kauffman, Clerk of the Board of Commissioners of Clearwater County, State of Idaho, and to said M. G. Nease and to Allen A. Holsclaw, County Attorney for Clearwater County, Idaho; and to whom it may concern:

You and each of you take notice that the undersigned, John Lewis, a taxpayer of Clearwater County, State of Idaho, at this time and for several years last past upon 480 acres of land, and upon town lots in Orofino, Idaho, deeming the order hereinafter mentioned of the Board of Commissioners of Clearwater County, illegal and prejudicial to the public interests hereby appeals to the Honorable Judge of the District Court of the Second Judicial District of the State of Idaho, (said Judge now being the Honorable Edgar C. Steele, of Moscow, Idaho,) from an order made by the said Board on the 15th day of April, 1914, in the matter of the Acceptance April 15, 1914, by the Board of Commissioners of Clearwater County of the Proposal of M. G. Nease, dated April 15, 1914, the concluding portion of said order following the recitals and findings being in the words following, to-wit:

“Therefore, after full and due consideration of the matter and being fully advised in the premises, it is concluded and decided by the Board that it is absolutely necessary for the orderly and prudent management of the affairs of the County *to have the timbered lands in the County* cruised and to have records and reports of such cruising made and filed with the County Assessor for use by him in making up his assessment and also for the use by the Board of Equalization and that it is impossible for the assessor of this county to make an assessment or valuation of the timber lands of this county within many millions of dollars of their true cash value unless a full and careful cruise of such timbered lands be made and proper data furnished therefor, and that it is to the best interest of the taxpayers of the County that the cruise be made and the proposal of Mr. Nease be accepted and it is accepted and so ordered.”

The said order being the order by virtue of which the said Board entered into a contract with said Nease for and on behalf of Clearwater County, dated April 15, 1914.

This appeal is taken both on questions of law and fact, and the same is taken from the said order and from the whole thereof.

Dated this 5th day of May, 1914.

JOHN LEWIS,
Appellant,
Postoffice address: Dent, Idaho.

JAMES E. BABB,

Attorney for John Lewis,

Postoffice address: Rooms 8 and 9 Lewiston

National Bank Building, Lewiston, Idaho.

BEFORE THE BOARD OF COMMISSIONERS OF
CLEARWATER COUNTY, IDAHO.

In the Matter of the Acceptance April 15, 1914, by
the Board of Commissioners of Clearwater County,
of the Proposal of M. G. Nease to the said Board
dated April 15, 1914.

NOTICE OF APPEAL.

Served on me and filed this day of May, 1914.

.....

Clerk of the Board of Commissioners
of Clearwater County, Idaho.

BEFORE THE BOARD OF COMMISSIONERS OF
CLEARWATER COUNTY, IDAHO.

In the Matter of the Acceptance April 15, 1914, by
the Board of Commissioners of Clearwater County,
of the Proposal of M. G. Nease to the said Board
dated April 15, 1914.

AFFIDAVIT OF SERVICE OF NOTICE OF
APPEAL.

Filed May 5th, 1914.

JOSEPH KAUFFMAN,
Clerk of Board of Commissioners
of Clearwater County, Idaho.

“EXHIBIT 16.”

CRUISERS' INSTRUCTIONS AND AGREE-
MENT.

Dear Sir:

In employing you as a timber estimator and land classifier in the State of Idaho, it is with the distinct understanding and agreement on your part that you will carry out absolutely all the instructions and agreements set forth in this instrument:

I am not going to suggest the amount of ground you shall cover in a day, but as a matter of course will expect a full and honest day's work every day, but in any case, do not want you to sacrifice in any degree the completeness or accuracy of your work, so you will distinctly understand that the amount of ground you cover is not the first consideration, but, on the contrary, the accuracy of your work and fullness of your reports are first to be considered.

NO EXCUSES FOR INACCURACY will be accepted, as you are the sole judge of the amount of ground to be covered each day.

All estimates will be based on the *SCRIBNER* rule, as this rule has been adopted as the legal or statute rule by the State of Idaho.

In making your estimate of SAW TIMBER you will include all standing SOUND TIMBER of a stump diameter of twelve (12") inches and upwards and you will include in your estimate the contents of such trees to an eight (8") inch top.

ALL RED FIR AND TAMARACK which in your judgment should not be classified as saw timber will be classified as TIES and you will in your estimate

show the number of TIES on each 40-acre tract. A TIE of standard dimensions is seven (7") inches by nine (9") inches, eight (8) feet long.

In estimating CEDAR POLES you will include all CEDAR trees of a Top diameter of not less than six (6") inches twenty-five (25') feet above the stump, excepting such Cedar as shall be included in your estimate as saw timber. Your estimate of CEDAR POLES shall be given in LINEAL FEET.

You will make the necessary allowance for breakage and for defective timber.

You are to include in your report a description of the character of the various kinds of saw timber, giving the average stump diameter, the average number of 16' logs per tree, the percentage of surface clear timber, also describe logging conditions, which shall include an estimate of the cost of logging according to your best judgment. Show distance to outlet, such as rail or stream, also include in your report all damage by fire, wind, insects, or otherwise, and your idea as to the probability of fire.

In going over your ground you will make a topographic sketch showing all openings, clearings, burns, marshes, lakes, etc., farms, slashings, etc., and the approximate NUMBER OF ACRES OF EACH ON EACH 40 ACRES OF LAND; also show all rivers, creeks, trails, waterfalls, valuable stones, clay, coal, or other mineral outcroppings and all other topographic features usually observed by timber cruisers.

You will make a map describing SURFACE and SOIL on each Governmental sub-division, this map

to show the approximate number of acres of the different surface and soil conditions on EACH GOVERNMENTAL SUB-DIVISION, OR 40. The SURFACE will be described as follows: A—Level or comparatively Level Ground; B—Rolling Land, which can be plowed; C—Hilly or Heavy Rolling; D—Steep; E—Badly Broken, Precipitous. The SOIL will be described as follows: No. 1 Black Loam; No. 2 Brown Loam; No. 3 Either Black or Brown Loam, of the gravelly nature, or mixed with Gravel. No. 4 all classes of soil in which you will find Nigger Heads, Boulders and scattered Rock Ledges; No. 5 consisting of Waste or worthless land, such as Rock Ledges, etc.

In making your topographic and soil sketches show all features in the same manner as designated on the attached field blanks.

Take elevations by means of Aneroid Barometer on all land examined as follows: You will take the elevations at each section corner, then in going through each 40-acre sub-division you will take the elevation on each 40 line, whether there is any change in elevation or not, and then you will take further elevations at the top of all ridges and at the banks of all creeks and streams and at the bottom of all ravines. Further than this other elevations should be taken at intervals not to exceed 100 feet in elevation. SHOW EXACT LOCATION AT WHICH ELEVATION IS TAKEN BY MARKING YOUR PLAT WITH A SMALL CIRCLE, AS INDICATED ON THE ATTACHED PLAT.

You will keep a CAMP RECORD of your aneroid readings as follows: There is herewith furnished you a blank for aneroid camp readings. These readings are to be taken daily, in the morning and again in the evening to enable you to check your field work should there be any atmospheric change requiring same.

You will also include in your aneroid camp record as above set out the further information showing location of camp.

In making up your topographic sketch showing all ridges, ravines, bluffs, as you will find them on the land designated on your topographic map all wagon roads and describe them by the key of A, B, and C; A indicating first-class wagon road passable at all times of the year for all classes of vehicles; B indicating what would be generally considered a fairly good country road passable at all times of the year for horse-drawn vehicles; C indicating unimproved and private roads leading to individual farms. In describing all trails which you may find report as to their general condition and whether suitable for horse and pack trails.

It is absolutely necessary, as stated above, that you should show the approximate number of acres included in the various topographical features in each Governmental sub-division or 40.

As previously stated, you will include in your estimate all SOUND TIMBER, making the necessary allowance for breakage and defect.

It is further understood and agreed that all of

your work shall be subject to a check by some person designated by the County Commissioners of the counties in Idaho, in which you work, and in case of a dispute as to the accuracy on your cruise it is further agreed that you are to abide by the decision of an arbitrator to be selected by the County Commissioners of the Counties in Idaho, in which you work, and me; said Arbitrator to recruise such lands as may be in dispute, and in case your estimate shall be found to be more than 15 per cent above or below the estimate of above mentioned arbitrator, then it is understood and agreed that you are to bear the expense of such arbitration; and it is further agreed that I may pay the expense incurred in such arbitration and deduct same from any sums of money due you.

You will LOCATE THE SECTION CORNERS AND QUARTER CORNERS, and describe on your report the witness trees found at each corner, as for instance, if a witness tree should be a Fir tree 26" in diameter you will mark the corner, or quarter corner, of your plat F-26, F meaning Fir, and 26 meaning inches, and in the same manner indicate on the field blanks any other varieties of trees and their size that are found as witness trees. On one witness tree at each corner located you will CUT IN WITH YOUR AXE the letter "N" large enough to be easily found.

IN WRITING UP YOUR REPORTS IT IS ABSOLUTELY NECESSARY THAT THEY BE FULL AND COMPLETE, NEAT AND PERFECTLY PLAIN, AND THAT THE BOUNDARIES OF

ALL TOPOGRAPHIC FEATURES BE PLAINLY TRACED. NO INCOMPLETE REPORTS WILL BE ACCEPTED.

YOU WILL CARRY THIS LETTER WITH YOU INTO THE TIMBER AND REFER TO IT AS OFTEN AS NECESSARY SO THAT THERE WILL BE NO EXCUSE FOR YOUR FAILURE TO DO ANYTHING REQUIRED OF YOU.

The attached field blank in itself is also to be referred to and is to be considered as a reference for you in doing your work.

I EXPECT THE WORK TO BE DONE IN IDAHO UNDER THE TERMS OF MY CONTRACT IN THE VARIOUS COUNTIES TO BE AS NEAR CORRECT AS HONEST EFFORT, SKILL AND ABILITY CAN POSSIBLY MAKE IT.

You will be required to make an affidavit certifying to the correctness of all reports turned in by you.

Your acceptance of employment in Idaho is to be considered as absolute agreement on your part to abide by all the terms and instructions contained in this instrument.

Yours truly,

.....

I hereby acknowledge receipt of your letter dated Sept. 1, 1914, of which the above is a duplicate.

I hereby agree to all the terms and conditions set forth therein.

.....

"EXHIBIT 17."

ANNUAL FINANCIAL STATEMENT

OF THE

COUNTY AUDITOR OF CLEARWATER COUNTY, IDAHO

FOR THE FISCAL YEAR ENDING APRIL 10, 1915

Assessed valuation of all property after equalization:

Original Roll	\$ 10,473,052.00
Personal Property Assessment Roll.....	127,650.00
Total	<u>\$ 10,600,702.00</u>
Patented lands	\$ 7,594,604.00
Railway lines	682,250.00
Current transmission lines.....	33,450.00
Telegraph lines	1,568.00
Telephone lines	2,340.00
Pullman private car lines.....	2,917.00
Standing timber owned separate from land.....	435,743.00
Improvements on lands.....	96,512.00

Town lots	124,174.00
Improvements on town lots	188,840.00
Common cattle	39,184.00
Milk cows	26,507.00
Horses	76,785.00
Sheep	6,276.00
Hogs	4,685.00
Lumber	526,112.00
Saw logs	40,704.00
Wood	3,747.00
Merchandise	89,685.00
Mining Machinery	2,250.00
Farming implements and tools of mechanics	55,232.00
Household goods	46,245.00
Furniture	8,117.00
Farm machinery	12,407.00
Harness	1,070.00
Hay and grain	8,197.00

Saw mills	322,360.00
Logging tools	82,500.00
Not otherwise classified.....	54,613.00
Bank stock	31,628.00
Total assessed valuation.....	<u>\$ 10,600,702.00</u>

Total assessed valuation in 1913.....\$ 9,124,845.00

Total assessed valuation in 1914..... 10,600,702.00

Increase in valuation..... 1,475,857.00

RATE AND AMOUNT OF TAX LEVY FOR 1914.

	Levy.	Amount.
State .....	.00185	\$ 19,611.00
Warrant redemption .....	.00190	20,141.33
Current expense .....	.005	53,003.51
General road .....	.0025	26,501.18
General bridge .....	.001	10,600.70
Special road and bridge.....	.0005	5,300.35
Interest .....	.00025	2,650.18

General school .....	.004	42,402.81
Total levy for State and County, 17 mills. Total		<u>\$180,211.36</u>
Grand total for State and County, 1913	\$134,615.91	
Grand total for State and County, 1914	180,211.36	
Increase in amount		<u>\$ 45,596.18</u>
Villages.	Levy.	Valuation. Amount.
Orofino	14 mills	\$263,684.00 \$3,691.57
Elk River	19 mills	115,620.00 2,196.93
Elk River, Delinquent, special improvement taxes placed upon the roll for collection to the amount of		1,259.57
Total, for Municipalities		<u>\$379,312.00 \$7,148.07</u>
GRAND TOTAL REVENUE FROM PROPERTY TAXES, 1914.		
Original Assessment Roll		\$212,913.31
Personal Property Roll		3,144.20
Total revenue from property taxes		<u>\$216,057.51</u>

Deductions made from Property Tax Revenue:

Erroneous and double assessments.....	\$	2,197.88
Tax sale certificates of 1914.....		12,351.19
Second payments due first Monday, July.....		15,379.00
Total net revenue from property tax.....		186,129.44

\$216,057.51

Total net revenue from property taxes, 1914..... \$186,129.44

REVENUES FROM OTHER SOURCES THAN PROPERTY TAXES CLASSIFIED.

Fees earned by Clerk.....	\$	2,768.40
Fees earned by Treasurer.....		97.31
Fees earned by Sheriff.....		370.27
Fees earned by Probate Judge.....		336.20
Fees earned by Assessor.....		1.00
Fees earned by Superintendent of Schools.....		16.00
1913 Taxes		10,856.80
Collections from tax sale certificates.....		9,751.68
Redemptions, tax sale certificates.....		4,172.08

Interest on County deposits.....	1,014.59
Fines, Justice Courts	65.80
Fines, District Court.....	400.00
School apportionment from State.....	3,525.25
Entertainment School Dist. No. 22.....	50.00
Entertainment School Dist. No. 11.....	16.60
Entertainment School Dist. No. 1 Con.	45.50
Entertainment School Dist. No. 7.....	.25
Fees, Manual Training Dist. No. 22.....	15.00
Sale of stove, Training Dist. No. 22.....	2.50
Sale of books, Training School Dist. No. 5.....	1.85
Sale of lumber, Training School Dist. No. 8.....	8.00
Personal property taxes, unapportioned.....	264.03
From Public Administrator.....	298.89
Forest Reserve	625.46
Fees District Candidates.....	15.60
Road Polls	1,051.50
Bonds forfeited	200.00

Interest funds, School Dist. No. 31.....	14.00	
Tuition, from other counties.....	8.70	
Refund, Orofino Tribune.....	77.40	
Sale of school books.....	5.31	
Sale of school bonds.....	4,691.46	
Miscellaneous licenses.....	170.00	
<hr/>		
Total revenue other than 1914 property taxes.....		\$ 40,937.43
<hr/>		
Total net revenue from all sources.....		\$227,066.87
<hr/>		
DISTRIBUTION OF REVENUES.		
State.....		\$ 19,416.50
Current expense.....	\$ 53,310.06	
General road.....	21,635.70	
District road.....	9,734.25	
Bridge.....	9,153.36	
Schools.....	65,183.98	
Interest.....	2,485.61	

Warrant redemption	24,226.88	
Scalp	33.98	
Institute	16.00	
Orofino	3,984.91	
Elk River	2,896.00	
Tax redemption fund	4,274.13	
Public Administrator	298.89	
Pierce Highway District	5,790.15	
Personal property tax	264.03	
Special road and bridge	4,717.18	208,005.11
Total		<u>\$227,421.61</u>
Deduct—		
Personal property taxes of 1913, distributed into the above ac-		
counts		454.74
Net revenues of 1914 distributed		<u>\$227,066.87</u>

<i>Expenditures Classified.</i>	<i>County Warrants Paid.</i>
State remittances	\$ 19,427.74
Current expense	49,908.32
Roads	28,137.38
Bridge	9,863.90
Schools	60,047.40
Warrant redemption	33,733.81
Pierce Highway District	5,768.29
Village of Orofino	3,995.98
Village of Elk River	2,586.27
Tax redemption	4,429.69
Interest	5,715.51
Total expenditures	<u>\$223,614.29</u>
Amount brought forward	<u>\$223,614.29</u>
Total expenditures	<u>223,614.29</u>

AMOUNT OF CASH ON HAND IN EACH FUND.	
State	\$ 78.60
General School	3,833.44
Bridge	46.59
General Road	108.27
Interest	1,985.61
Current Expense	2,223.64
Warrant Redemption	731.32
Interest—Institute	29.00
Tax Redemption fund	217.99
Orofino	6.00
Elk River	325.62
Pierce Highway District .....	.10
District Roads	7,101.52
Scalp	241.52
Public Administrator	424.87
Special Road and Bridge	4,717.18
Personal Property Tax	264.03

District Schools	19,465.09	
Total cash on hand.....		\$41,850.39
Recapitulation of cash funds:		
Amount on hand last report	\$ 38,397.81	
Total receipts during 1914.....	227,066.87	
Total expenditures as above.....		\$223,614.29
Balance on hand as above.....		41,850.39
Totals	\$265,464.68	\$265,464.68
ESTIMATED VALUE OF PROPERTY BELONGING TO COUNTY.		
Court House Site.....	\$ 1,750.00	
Furniture and fixtures.....	5,300.00	
Jail and fixtures	900.00	
Road machinery and tools.....	2,200.00	
Tax Sale Certificates, and Taxes of 1914 payable first Monday in July, 1915.....	18,876.62	
Total		\$29,026.62

AMOUNT DUE VARIOUS FUNDS FROM 1914 TAX ROLL

State	\$ 1,270.27	\$ 1,270.27
Warrant Redemption	1,304.60	
Current Expense	3,433.15	
General Road	1,716.58	
General Bridge	686.63	
Special Road and Bridge	343.31	
Interest	171.65	
General School	2,746.53	10,402.44
Special Schools	1,806.74	
Special Roads	350.76	
Pierce Highway	287.14	
Elk River	484.11	
Orofino	777.54	3,706.29
Total due from 1914 Roll		\$15,379.00

Amount due the various funds and accounts from Tax Sale Certificates:

State	\$ 500.96
-------------	-----------

County	8,474.18	
Village of Orofino	216.12	
Village of Elk River	433.38	
District Schools	561.32	
District Roads	518.27	
Pierce Highway District	61.24	
Total		\$ 10,765.47
AMOUNT AND CHARACTER OF INDEBTEDNESS		
Floating Debt of Warrants Outstanding:		
Current Expense	\$ 72,333.99	
Road	35,465.79	
Bridge	1,552.00	
Warrant Redemption	26,365.18	
Total County Warrants, outstanding		\$135,716.96
District Road Warrants	\$137.75	
District School Warrants	129.82	

Total District Warrants outstanding.....	267.57
Grand Total of Warrants outstanding.....	<u>\$135,984.53</u>
Cash in funds applicable to payment on floating debt.....	\$ 10,054.13
Cash applicable to payment on District Warrants	267.57
Net floating debt.....	<u>125,662.83</u>
Total	<u>\$135,984.53</u>
Recapitulation of County Indebtedness:	
Net debt for year 1914.....	\$125,662.83
Net debt last report.....	56,772.86
Increase in indebtedness.....	68,889.97
Total	<u>\$125,662.83</u>
Recapitulation of Warrant Account:	
Total warrants outstanding last report.....	\$ 70,767.98
Total warrants issued during year.....	246,887.36
Total warrants paid during year.....	181,690.81
Total warrants outstanding as above.....	135,984.53
Totals	<u>\$317,675.34</u>

ABSTRACT OF EXPENDITURES—CURRENT EXPENSE

Clerk, Auditor and Recorder.....	\$7,093.08
Salary	\$1,800.00
Deputies and Clerks.....	2,704.46
Records and supplies.....	2,237.46
Expenses	351.16
<hr/>	
Sheriff's Office	\$4,117.62
Salary	\$1,233.33
Deputies	1,881.68
Board for prisoners and supplies for jail.....	52.35
Records and supplies.....	73.75
Expenses	876.51
<hr/>	
Assessor's Office	\$68,068.86
Salary	\$1,266.66
Deputies and Clerks.....	1,222.64
Records and supplies.....	464.62

Expenses (J. F. Gorman \$1,124.11)	2,145.26	
Cruising timber lands	62,999.68	
Treasurer's Office		\$3,546.23
Salary	\$1,500.00	
Deputies and Clerks	1,322.00	
Records and supplies	351.71	
Expenses	372.42	
County Attorney		\$2,113.72
Salary	\$1,199.99	
Records and supplies	27.63	
Expenses	786.10	
Superintendent of Public Instruction		\$2,267.06
Salary	\$1,200.00	
Clerical assistance	302.65	
Examinations and institutes	24.40	
Records and supplies	193.68	

Expenses	546.33	
Surveyor		\$361.95
Salary	\$266.68	
Records and supplies	54.53	
Expenses	40.75	
Coroner		\$387.02
Salary	\$200.04	
Expenses	40.35	
Inquests	146.63	
Commissioners		\$2,321.24
Salaries	\$1,499.79	
Expenses	821.45	
Probate Court		\$1,338.24
Salary of Probate Judge	\$1,044.41	
Jurors and witnesses	170.75	

Taking testimony	3.60	
Records and supplies	43.63	
Expenses	75.85	
		<hr/>
District Court		\$962.05
Jurors	\$ 68.40	
Witnesses	816.25	
Interpreters	28.00	
Board for jurors	49.40	
		<hr/>
Miscellaneous		\$5,964.24
Miscellaneous items	\$3,982.89	
Telephone	396.80	
Rent	1,584.55	
		<hr/>
Justice Courts		\$200.40
Justice fees	\$ 99.95	
Jurors and witnesses	15.40	

Taking testimony	85.05	
County Physician		\$ 232.17
Salary	\$ 187.50	
Expenses	44.67	
Court House		\$1,235.07
Janitor	\$253.17	
Fuel, light and water	106.90	
Repairs and supplies	875.00	
Poor, outside County Home		\$4,745.93
Medical treatment	\$1,407.00	
Care and nursing	947.33	
Supplies	2,162.10	
Burials	82.00	
Transportation	147.50	

General Election	\$1,213.40
Election officers	826.00
Supplies	329.40
Rent	58.00
<hr/>	
Primary Election	\$ 981.10
Election officers	\$ 719.85
Supplies	226.25
Rent	35.00
<hr/>	
Bridge	\$5,284.73
<hr/>	
Sundry Expenses	\$15,303.47
Emergency employment	\$ 589.52
Purchasing agent	69.02
Printing	3,551.17
Refund taxes	944.73
Cougar bounty	450.00
Appropriations	695.30

Premium on official bonds.....	536.40	
Widow's pensions	2,964.60	
Coyote bounty	218.00	
Total chargeable to Current Expense.....		\$122,352.76
Schools		\$56,168.55
Teachers' salaries	\$35,202.02	
Janitor	1,742.15	
Interest	1,126.67	
Clerk	296.50	
Payment on bonds.....	1,272.33	
Supplies	5,074.05	
Fuel, light and water.....	1,646.01	
New buildings	2,995.18	
Repairs	813.16	
Labor	4,830.98	
Miscellaneous	1,169.50	
Total chargeable to Schools.....		\$56,168.55

ROADS AND BRIDGES

General Road	\$56,685.74
Overseers	\$7,015.34
Machinery and tools	4,252.34
Right of way	212.55
Culverts	1,783.75
Labor	33,378.01
Contracts	10,043.75
District Roads (special)	\$7,038.75
Labor	\$6,441.10
Supplies	328.70
Overseers	268.95
Bridges	\$4,752.00
Contracts	\$4,661.00
Labor	91.00
Total chargeable to Roads and Bridges	\$68,476.49

NO BONDED INDEBTEDNESS

Comparative statement of fees earned by county officers:

	1911	1912	1913	1914
First quarter	\$ 746.62	\$ 838.71	\$ 617.04	\$ 599.12
Second quarter	734.49	647.60	720.66	1,136.90
Third quarter	757.57	1,034.70	685.95	1,035.53
Fourth quarter	665.52	372.28	986.40	793.65
Totals	\$2,954.20	\$2,883.29	\$3,010.05	\$3,535.20

GENERAL RECAPITULATION

Receipts from all sources	\$227,066.87
Expenditures	\$223,614.29
Excess of receipts over disbursements	3,452.58
Total	\$227,066.87
Cash on hand last report	\$38,397.81
Excess of receipts over expenditures	3,452.58
Proving cash on hand April 10, 1915	\$41,850.39

State of Idaho,
County of Clearwater.

Joseph Kauffman, being first duly sworn, deposes and says that he is the ex-Officio County Auditor of said Clearwater County, State of Idaho, and that the foregoing is a full, true and complete statement of the financial condition of said County for the fiscal year beginning on the second Monday of April, A. D. 1914, and ending on the second Monday of April, A. D. 1915.

JOSEPH KAUFFMAN,
Ex-Officio Auditor in and for
Clearwater County, Idaho.

Subscribed to in my presence by the said Joseph Kauffman, and by him sworn to before me this 10th day of May, A. D. 1915.

(Seal)

WILLIAM J. TODD,
Probate Judge.

SUPPLEMENT.

A Brief Synopsis of the Tax Laws of Idaho.

1. All property within the jurisdiction of this state, not expressly exempted, is subject to taxation.
2. All taxes levied on personal property shall be a lien upon the real property of the owner.
3. The following property is exempted from taxation, provided exemptions do not exceed \$1000:
 - (a) Property belonging to the United States, this state, county, or municipal corporations, school districts, religious, fraternal or charitable societies, fatherless children under the age of 18 years, honorably discharged soldiers or sailors,

widows, provided such property owners are residents of this state.

(b) Growing crops, orchard trees, private libraries, (\$400) Physicians' scientific instruments, tools, of mechanics, farming implements (\$400), household goods, hospitals, co-operative telephone lines, and public libraries.

4. The board of county commissioners shall meet as a Board of Equalization on the fourth Monday of June of each year.

5. The State Board of Equalization shall report any changes in assessments on or before the first Monday of September.

6. The Board of County Commissioners shall make the annual levy of taxes for the coming year on the second Monday of September.

7. Taxes may be paid in two installments. If paid in one payment such payment must be made on or before the first Monday of January. If made in two payments, one-half is payable before the first Monday in January and the second half before the first Monday in July.

8. All State taxes shall be paid to the state in full before the second Monday in July whether collected or not.

9. The tax collector, on or before the second Monday in January of each year shall make out delinquency certificates for all property on which one-half the original amount of taxes has not been paid. The Tax Collector also shall make out on or before the second Monday in July delinquent certificates to be dated as of the second of January, for all property on

which the remaining one-half of such taxes with penalty added, has not been paid.

10. On or before the fourth Monday of January in the year in which delinquency certificates are issued, and within two years from the date of such certificates, the county auditor shall sell any such delinquency certificates to any person who may apply to him for the purchase thereof.

11. No tax certificates of any year may be sold unless all delinquency certificates on this property for prior years have been sold.

12. Property described in any delinquency certificate may be redeemed from tax sale by the owner thereof, or any party in interest, within two years from the date of such delinquency certificate by paying the amount of all delinquent taxes and penalties, together with interest.

13. If redemption of property from tax sale is not made within two years from the date of certificate the owner of such certificate must, not less than 30 days nor more than 90 days after the expiration of time of redemption, commence action to foreclose the tax lien.

14. If the owner of any delinquency certificate fails to commence action for foreclosure of tax lien in the legal time, such delinquency certificate shall be void.

15. Upon the purchase of any property by the county on foreclosure of tax lien, a sheriff's certificate of sale shall be issued to the county, and, after expiration of the period of redemption, a sheriff's deed shall be issued to the county and filed for record.

PRECINCT OFFICERS

1915-1916

Precinct	Justice of the Peace	Constable	Votes cast 1914
Elk River	C. G. Morris..... R. K. Wheeler.....	E. O. Torgerson.....	288
Orofino	Fred D. Hammond..... W. M. Chandler.....	J. C. Bullock.....	555
Fraser	Fred H. Judd.....		118
Weippe	Xavier Durant..... S. M. Snyder.....	Luther M. Bonner.....	114
Dent	Mabelle E. Ove.....		54
Fords Creek	Job Bonner.....	H. D. Carr.....	42
Teakean	E. A. Patterson..... W. E. Tarry.....	Chas. C. Bloom.....	151
Gilbert	J. B. Dickson.....		107
Ahsahka	S. S. Linton.....		110
Greer	E. J. Stenzel.....	J. H. Currin.....	69

LIST OF NOTARY PUBLICS, CLEARWATER COUNTY, IDAHO

	Term Expires
P. H. Blake, Orofino.....	Oct. 23rd, 1917
John R. Becker, Orofino	Sept. 16th, 1916
A. E. Holmberg, Orofino	June 12th, 1916
W. J. Hannah, Orofino	July 5th, 1915
A. A. Holsclaw, Orofino	Jan. 15th, 1917
J. S. Hogue, Orofino	April 19th, 1917
Bertha Mooers, Orofino	Nov. 8th, 1915
W. M. Peatman, Orofino	Oct. 31st, 1915
J. B. Loomis, Orofino	Feb. 10th, 1918
E. A. Patterson, Teakean	Feb. 27th, 1917
R. A. Balch, Elk River.....	Aug. 14th, 1915
F. E. Smith, Elk River.....	Jan. 24th, 1916
R. K. Wheeler, Elk River.....	March 28th, 1916
W. J. Todd, Pierce.....	Jan. 30th, 1917
H. L. Walroth, Orofino.....	March 28th, 1918
J. L. Fitzgerald, Orofino.....	Feb. 1st, 1919

T. B. Reed, Pierce March 12th, 1919
 W. H. Simmons, Weippe April 18th, 1918

COUNTY OFFICERS, CLEARWATER COUNTY, IDAHO

	Salary
State Senator—E. M. Grant, Elk River, Idaho	
Representative—T. J. LaForest, Orofino, Idaho	

COUNTY OFFICERS

Commissioner, 1st Dist.—Jesse L. Coontz, Greer, Idaho	\$ 500.00
Commissioner 2nd Dist.—J. P. Harlan, Orofino, Idaho	500.00
Commissioner 3rd Dist.—Fred Choate, Teakean, Idaho	500.00
Clerk Dist. Court and ex-officio Auditor and Recorder—Joseph Kauffman, Orofino, Idaho	1,800.00
F. N. Shreve, Sr. Deputy	1,260.00
O. H. Holmberg, Jr. Deputy	1,080.00
Sheriff—E. J. Sullivan, Elk River, Idaho	1,350.00
E. W. Jewell, Dep., Orofino	960.00
Peter Shen, deputy, Elk River, Idaho	900.00

County Treasurer—Orin D. Crockett, Orofino, Idaho	1,500.00
W. M. Chandler, Orofino, Idaho	1,080.00
Probate Judge—Wm. J. Todd, Pierce, Idaho	1,200.00
School Supt.—Mayme Fisher, Orofino, Idaho	1,200.00
Assessor—A. E. Hinckley, Orofino, Idaho	1,500.00
J. M. Molloy, Deputy, Orofino, Idaho	1,080.00
Coroner—Geo. L. Wilfong, Orofino, Idaho	200.00
Surveyor—Robt. B. Swadener, Orofino, Idaho	500.00
Prosecuting Attorney—F. E. Smith, Elk River, Idaho	1,200.00

SCHOOL DISTRICTS

Dist. No.	Valuation	Sinking	General	Total
1 Con.	\$ 69,925	.....	.0064	.0064
1 Rural High	538,022	.001	.0044	.0045
1	3,599,996	.0005	.....	.0005
2	27,587	.....	.....	.....
3	338,352	.....	.0052	.0052
4	58,081	.....	.....	.....

5	.....	124,697	.....	.....	.....
6	.....	130,821	.....	.0105	.0105
7	.....	49,147	.004	.....	.004
8	.....	103,771	.....	.0024	.0024
9	New District	492,648	.....	.....	.....
10	.....	3,171,599	.....	.....	.....
11	.....	44,050	.....	.....	.....
12	.....	86,238	.....	.....	.....
13	.....	192,770	.....	.002	.002
14	.....	168,571	.....	.001 $\frac{1}{3}$	.001 $\frac{1}{3}$
15	.....	49,935	.002	.....	.002
16	New District	82,795	.....	.....	.....
17	.....	14,945	.....	.010	.010
19	.....	52,377	.....	.....	.....
20	.....	79,983	.....	.003	.003
21	.....	61,978	.....	.005	.005
23	.....	66,861	.....	.006	.006
22	.....	404,079	.003	.0035	.0065

24	.....	21,466	.002	.0106	.0126
25	.....	143,608	.....	.00125	.00125
26	.....	201,644	.....	.00075	.00075
27	.....	16,996	.....	.....	.....
28	.....	31,236	.0025	.0016	.0041
29	.....	149,742	.....	.0055	.0055
30	.....	71,422	.....	.....	.....
31	.....	64,358	.0025	.....	.0025
32	.....	68,064	.003	.....	.003
34	.....	20,389	.0055	.005	.0105
39	.....	87,473	.....	.0022	.0022

ROAD DISTRICTS.

District	Valuation		Overseer.	Address.
	1914	Rolls.		
No. 1	.....\$	170,705.00	Harry Gamble.....	Greer
No. 2	133,166.00	W. Vandevender	Weippe
No. 3	452,084.00	H. Nelson	Weippe

No. 4	80,760.00	...	A. H. Mullican	Orofino
No. 5	344,870.00	...	Amos Snyder	Orofino
No. 6	115,219.00	...	Fred Frazier	Orofino
No. 7	22,999.00	...	Nils Olson	Orofino
No. 8	66,989.00	...	I. H. Hall	Orofino
No. 9	2,251,629.00	25c	W. C. Harkness	Orofino
No. 10	96,332.00	...	M. Blackburn	Teakan
No. 11	164,264.00	...	A. C. Longeteig	Orofino
No. 12	15,480.00	...	E. C. Chase	Ahsahka
No. 13	215,759.00	...	Frank Surprise	Ahsahka
No. 14	49,827.00	...	A. H. Cosner	Lenore
No. 15	78,078.00	...	Orville Smith	Cavendish
No. 16	110,918.00	25c	Geo. Ferguson	Teakean
No. 17	2,448,371.00	...	Ira Schuh	Elk River
No. 18	1,459,761.00	...	Joe Duffy	Dent
No. 19	58,702.00	...	Earl Aiken	Southwick
No. 20	176,085.00	25c	Frank White	Orofino

No. 21	158,179.00	... M. L. Hatch	Orofino
Pierce Highway District—		Highway Commissioners:	C. W. Space
Valuation, 1914, \$1,438,213.00.			Jacob Gisel
Levy, 1914, 15c on each \$100.			Sumner Rigdon.

Endorsed: Filed April 6, 1916.
W. D. McReynolds, Clerk.
(Title of Court and Cause.)

(Title of Court and Cause.)

AMENDMENT TO ANSWER.

Comes now the above named defendants, and by leave of the Court first had and obtained, file this amendment to the answer on file in said cause, and allege:

I.

That immediately prior to the 24th day of February, 1914, P. H. Blake resigned from the office of Probate Judge for Clearwater County, and was appointed Assessor of Clearwater County; that these answering defendants are informed and believe, and upon such information and belief allege the fact to be true, that the said P. H. Blake and the Board of County Commissioners of Clearwater County and M. G. Nease fraudulently and collusively entered into an agreement among themselves that the said M. G. Nease was to be given a contract to cruise the timber in Clearwater County at a price greatly in excess of a fair and reasonable price for ordinary timber cruising, and that the said parties agreed to award said contract to the said M. G. Nease without competition.

II.

That immediately after an action had been instituted in the name of John H. Lewis against the said Board of County Commissioners of Clearwater County, to restrain the carrying out of the said contract with the said M. G. Nease, the said P. H. Blake, as Assessor of Clearwater County, the said Board of

County Commissioners and the said M. G. Nease fraudulently, and with the design to prohibit competition, and with an intent to let a contract to the said M. G. Nease for cruising timber at a higher price than was fair or reasonable, permitted the said M. G. Nease to cancel his contract of February 24, 1914, and enter into a new contract on the 15th day of April, 1914.

III.

That notwithstanding the fact that said contract entered into between the said M. G. Nease and the said Board of County Commissioners, provided that the said M. G. Nease should cruise only patented lands, these answering defendants are informed and believe, and upon information and belief allege the fact to be, that the said M. G. Nease and the said Board of County Commissioners and the said P. H. Blake, as Assessor, fraudulently permitted the said M. G. Nease to cruise a large amount of untaxable lands, viz., lands the title to which was then in the State of Idaho and in the United States Government.

IV.

And the said Board of County Commissioners, well knowing that the said M. G. Nease had filed bills for cruising a large amount of Government and State lands, and well knowing that the same was non-assessable, allowed claims presented by the said M. G. Nease against Clearwater County for the cruising of such non-assessable land, and issued purported warrants in payment thereof.

V.

That the said Board of County Commissioners and the said M. G. Nease fraudulently, and with the intent to prevent the taxpayers and interested persons in Clearwater County from taking action to contest the validity of said contract for timber cruising, permitted the action of John H. Lewis against the Board of County Commissioners, et al., and the appeal taken from the order of the Board of County Commissioners, wherein said County Commissioners entered into the contract with the said M. G. Nease for the cruising of timber under date of April 15, 1914, to remain on the docket in the District Court of said Clearwater County, for the purpose and with the intent to mislead taxpayers and interested persons in said Clearwater County; that the said Board of County Commissioners and the said M. G. Nease and the said P. H. Blake well knew that said purported actions were brought at the instance of a timber corporation owning timber lands in Clearwater County, and well knew that said actions would not be prosecuted against the said County Commissioners and the said M. G. Nease, and well knew that the same would be dismissed whenever demand was made by the said defendant, M. G. Nease, and well knew that the plaintiff, John H. Lewis, had no control over said actions.

VI.

That the said M. G. Nease, with the knowledge and consent of the Board of County Commissioners, and of the said P. H. Blake, hurriedly performed the

work under his said contract, and said work was inaccurate and of no value to Clearwater County for assessment purposes; that said County Commissioners pretended to employ a man to check the work of the said M. G. Nease and his timber cruisers, and said checker knew, and had reason to know, that the work of the said M. G. Nease was incompetent, and of no value to Clearwater County; that all of the said information was known to the said Board of County Commissioners, and notwithstanding such information the said Board of County Commissioners knowingly permitted the said M. G. Nease to file bills for purported cruising of timber lands in Clearwater County, and to allow the same, when said work was of no value; that the checker employed by said Board of County Commissioners never filed any record of his work; that said reports were delivered secretly and privately to the said Board of County Commissioners and to the said P. H. Blake, as assessor.

FRED E. BUTLER,
Attorney for Defendants.

JOHN R. BECKER,
Attorney for Defendants.

Endorsed: Filed May 9, 1916.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

AMENDMENT TO ANSWER.

Come now the above named defendants, and pursuant to stipulation in open court file the following amendment to their answer:

I.

That no list of any bills or claims in favor of M. G. Nease, purporting to have been allowed by the Board of County Commissioners of said Clearwater County, and certified to as required by section 1943 of the Revised Codes of the State of Idaho, has ever been filed with this answering defendant, Oren D. Crockett, or with his predecessor in office; and the Board of County Commissioners has not furnished this answering defendant, Oren D. Crockett, as Treasurer of said county, with any files or certified list of bills and accounts approved by said Board, giving the name of each person in whose favor the account or bill has been allowed, with the amount allowed him, and out of what fund the same is to be paid.

II.

That the purported warrants referred to in plaintiff's bill do not specify the liability for which they were drawn and when they accrued, as provided in Section 1955 of the Revised Codes of the State of Idaho.

FRED E. BUTLER,

JOHN R. BECKER,

Attorneys for Defendants.

Endorsed: Filed May 12, 1916.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

REPLY TO SEPARATE AND SPECIAL DEFENSE AND COUNTERCLAIM.

Comes now the plaintiff, Dexter Horton Trust and Savings Bank, a corporation, and replies to the

separate and special defense and counterclaim set forth in the answer of the defendant as follows:

I.

Referring to the allegations of paragraph two of said separate defense and counterclaim, this plaintiff is without knowledge as to whether Ralph B. Hunt and R. L. Rankin, or either of them, at any time signed or filed with the board of county commissioners of Clearwater county, Idaho, any proposal for doing any work for said county.

II.

Referring to the allegations of paragraph three of said separate defense and counterclaim, plaintiff denies that the contract made by said board of county commissioners with M. G. Nease on the 24th day of September, 1914, was made without further investigation by said board, and denies that the same was made in disregard of any of the rights of any of the taxpayers of said county. This plaintiff is without knowledge as to whether the assessor of Clearwater county did, on the 24th day of February, 1914, or at any time prior thereto, make any request or application in writing to the said board of county commissioners for a cruise or classification of any of the lands of said county.

III.

Referring to the allegations contained in paragraph four of said separate defense and counterclaim, this plaintiff is without knowledge as to whether the suit therein referred to was instituted

at the instance or request of the Clearwater Timber Company, or any other timber companies or owners of timber in said county.

IV.

Referring to the allegations of paragraph nine of said separate defense and counterclaim, this defendant denies that no notice or call was made by the board of county commissioners for the submission of proposals or bids in order that M. G. Nease might receive a preference and be given a contract without competition or without notice to the taxpayers of said county or upon terms more beneficial to the said Nease; and denies that specifications for said work were withheld for any such purpose or purposes.

V.

Referring to the allegations of paragraph ten of said separate defense and counterclaim, this plaintiff admits that the defendant, Clearwater County, did, on the 15th day of April, 1914, enter into a contract with M. G. Nease, of Portland, Oregon, and that a true copy of said contract is attached to the defendants' answer and marked Exhibit 11.

VI.

This plaintiff denies that any of the parties to said contract had at any time any reason to believe that the same was illegal and denies that any of the parties to said contract did or performed any act at any time without notice and without competition or at all in order to prevent any of the people of said county or any of the taxpayers thereof from having

full and complete knowledge of the transactions of said board and of said contract, and plaintiff denies that said contract was in any respect illegal.

VII.

Referring to the allegations of paragraph twelve of said separate defense and counterclaim, this plaintiff denies that the amount agreed by said contract to be paid to the said Nease for the work to be performed by him was exorbitant or unreasonable and denies that said board of county commissioners, or the said defendant county, could have procured said work to be performed in a competent manner by any person or persons whomsoever for any less sum than that specified in said contract to be paid to the said Nease, either by the adoption of uniform plans and specifications for said work or by the publishing of any notice or call for bids or in any other manner whatsoever.

VIII.

Referring to the allegations of paragraph thirteen of said separate defense and counterclaim, this plaintiff denies that the said board of county commissioners, or any of said commissioners of the defendant county, by virtue of any or all of the affidavits annexed to the order to show cause therein referred to, or in any manner whatsoever, were apprised or had reason to believe that the said Nease was exacting an exorbitant sum of money for the work he was to perform under his said contract, and denies that the said board of county commissioners, or any of said commissioners, of the defendant county, had reason

to believe or know that said Nease did not intend to give the county honest and thorough work in accordance with his said contract, and denies that the said board of county commissioners entered into said contract with the said Nease without complete and full investigation as to the merits, necessity and advisability thereof, and denies that the bond therein referred to did not adequately protect the said county.

IX.

Referring to the allegations contained in paragraph fourteen of said separate defense and counterclaim, this plaintiff denies that the maintaining of the action therein referred to without any steps being taken therein or at all misled any of the taxpayers or inhabitants of the defendant Clearwater County, or caused any of them to believe that the plaintiff in said action intended to waive an active contest or any contest against the contract entered into by the said defendant county and the said M. G. Nease, and denies that said contract was in any respect unlawful.

X.

Referring to the allegations of paragraph fifteen of said separate defense and counterclaim, this plaintiff denies that any of the taxpayers or citizens of the said county were in any manner deceived or led to believe that any timber company, or any other person or corporation whatsoever, through John Lewis, or otherwise, was in good faith attempting to set aside said contract by reason of the action of the said John Lewis in appealing from the order of said board of county commissioners referred to in

said paragraph and bearing date the 15th day of April, 1914, or at all.

This plaintiff is without knowledge as to whether said appeal was pending contemporaneously with the injunction proceedings therein referred to, and denies that by reason of the pendency of said proceedings, or at all, any citizens or taxpayers of the said county desisted from instituting any proceedings.

XI.

Referring to the allegations of paragraph sixteen of said separate defense and counterclaim, this defendant denies that work under the said contract between said defendant county and said Nease, bearing date the 15th day of April, 1914, was at any time suspended, but admits that work in the field was discontinued from about the 15th day of June, 1914, until about the first day of August, 1914.

XII.

Referring to the allegations of paragraph seventeen of said separate defense and counterclaim, this plaintiff denies that the said M. G. Nease failed in any manner to make a careful and complete and thorough cruise and estimate of the timber upon the patented lands in said Clearwater county, but alleges the fact to be that the said M. G. Nease fully performed said contract strictly in accordance with all the terms, conditions and agreements thereof.

XIII.

Referring to the allegations of paragraph eighteen of said separate defense and counterclaim, this plain-

tiff denies that the said M. G. Nease failed to comply with any of the requirements of his said contract in that his said reports did not contain full and correct topographical subdivision showing elevations of land above sea level, or in that the elevations shown on said report were not taken by means of aneroid barometers read at the points indicated on said sketches and plats, or in that said reports and plats do not correctly show the openings, burns, marshes, rivers, lakes, creeks, trails, roads, water falls, valuable stones, minerals, outcroppings and other topographical features observed by his said cruise, or in that the said report furnished under the said contract did not correctly describe the different varieties of timber as required by said contract, but alleges the fact to be that the said M. G. Nease fully complied in all of said respects with all of the terms of his said contract.

XIV.

Referring to the allegations of paragraph nineteen of said separate defense and counterclaim, this plaintiff admits that the timber growing upon a portion of the lands covered by said contract is of many different sizes and varieties, but denies that this is true in regard to all or most of said lands, and denies that there is no uniformity with the class of timber growing upon one legal subdivision of said lands as compared with another legal subdivision in the same locality; but admits that there is a lack of such uniformity as between certain of said lands and certain other of said lands, but alleges that there is such

practical uniformity with respect to the timber upon a large portion of the lands covered by said contract; denies that it was necessary for the timber cruisers to make at least two runs through each forty-acre tract of timber land covered by said contract in order to carefully cruise and estimate the amount of timber growing upon said lands and to furnish the other data agreed to be furnished by the said Nease under his said contract, but admits that it was necessary to make two runs through a portion of said lands, and denies that it is customary in making cruises and estimates of timber where a careful estimate is required to make at least two runs through each forty-acre tract of land; denies that on account of the character of said timber land or of the underbrush growing thereon, or of the ridges and canyons thereon, or at all, it is practically impossible for a timber cruiser to carefully estimate more than 160 acres of said land per day, but alleges the fact to be that it was and is possible for a competent cruiser to thoroughly and carefully cruise the most of said lands at the rate of a much larger amount than 160 acres per day; denies that the said M. G. Nease first or at any time required all of the timber cruisers working for him to make at least two runs through each forty-acre tract of land, and denies that any of his said cruisers made only one run through each forty-acre tract of land cruised by him; denies that any of said cruisers were, in August, 1914, or at any other time, instructed by the said Nease, or by any other persons, to make only one run through each

forty-acre tract of land; denies that any of said cruisers were ever at any time rushed, or required or persuaded to make advance in their work, or to hurry the completion of the work, and denies that a great majority of the cruisers working for said M. G. Nease actually reported having estimated 320 acres of land per day, and denies that any of the work performed or furnished by any of said cruisers was inaccurate or uncertain or indefinite or of no value to the said defendant county. This plaintiff is without knowledge as to whether any of said cruisers at any time reported as having estimated and cruised 320 acres of land per day, but alleges the fact to be that all of the work performed by each and every of said cruisers was done and performed in all respects as required by the said contract between the said defendant county and said Nease; this plaintiff is without knowledge as to whether any of the maps or plats furnished by the said Nease to defendant Clearwater county, indicated that a two-run cruise had been made upon and over all of the land for which the said M. G. Nease was charged and paid and denies that any of said maps or plats indicated anything that is false or untrue.

XV.

Referring to the allegations of paragraph twenty of said separate defense and counterclaim, plaintiff denies that in making up any of the copies for the defendant county of any of the estimates, reports or topographical sketches of any of said cruisers was arbitrarily altered or modified or any fictitious data

inserted and used; but alleges the fact to be that all of such copies were correct.

XVI.

Referring to the allegations of paragraph twenty-one of said separate defense and counterclaim, this plaintiff denies that during the cruises of the land covered by said contract during the months of August, September and October, 1914, or at any other time, any of the cruisers or employes of the said Nease ignored or violated the instructions therein referred to, and denies that the said Nease knew that any of his said instructions were being violated by any person whomsoever, and denies that any such violations were consented to, acquiesced in, or encouraged by the said Nease or his foreman, for the purpose of facilitating the said work of completing the said contract, or at all.

XVII.

Referring to the allegations contained in paragraph twenty-three of said separate defense and counterclaim, plaintiff denies that at the time of entering into said contract the county assessor of Clearwater county was exclusively invested by the laws of Idaho with all the powers and duties incident to the valuation of lands for purposes of taxation, and denies that said valuation and assessment were no part of the duties of the county commissioners of said county, and denies that under the laws of Idaho the board of county commissioners of said county had no powers or duties with reference to the assessment and taxation of property other than to equalize

the taxation thereof as fixed by the county assessors.

XVIII.

Referring to the allegations of paragraph twenty-four of said separate defense and counterclaim, plaintiff denies that the board of county commissioners of Clearwater county, or any of them, or the said M. G. Nease, at any time, knew that the said contract, bearing date the 15th day of April, 1914, was prohibited by the provisions of the statutes or constitution of the State of Idaho, or knew that the indebtedness attempted to be created by the said contract would exceed the income and revenue from all sources provided for Clearwater county for said year, and denies that the said contract was prohibited by any of the provisions of the statutes or constitution of the State of Idaho, and denies that the indebtedness created by said contract exceeded the income and revenue from all sources provided for Clearwater county for the year, and denies that said contract was prohibited by the provisions of Section Three of Article Eight, of the Constitution of the State of Idaho, or by any other law or section of said constitution; denies that said alleged contract was one entire and complete contract. This plaintiff is without knowledge as to whether the ordinary necessary expenses of the defendant county for the fiscal year 1914 or for the calendar year 1914 exceeded the income and revenue provided by said county for said year.

XIX.

Referring to the allegations of paragraph twenty-six of said separate defense and counterclaim, this

plaintiff denies any knowledge as to the financial statement therein referred to and marked Exhibit 17, and denies any knowledge as to the amount of the levy made by the board of county commissioners of the defendant county for the fiscal year ending April 10, 1915, and denies any knowledge as to the greatest amount that could have been produced under the said levy; denies any knowledge as to the amount of the revenue derived from said county for said fiscal year from all sources and as to the amount of aggregate current and necessary expense of said county for said fiscal year.

XX.

Referring to the allegations of paragraph twenty-eight of said separate defense and counterclaim, this plaintiff denies any knowledge as to whether any hearing was ever had upon the order to show cause therein referred to, and denies that the public generally, or any of the taxpayers of said defendant county, were of the opinion that the suit therein referred to would be pressed for the protection of any of the taxpayers of said county and that the same would be vigorously contested.

XXI.

Referring to the allegations of paragraph twenty-nine of said separate defense and counterclaim, this plaintiff denies any knowledge as to whether there was ever at any time any understanding between the Clearwater Timber Company, or any other owner of large timber interests, or other persons, that the suit therein referred to should not be further prosecuted,

and denies any knowledge as to whether the said M. G. Nease was ever at any time furnished with a copy of any of the timber estimates or the cruises of the Clearwater Timber Company, or the cruise of any other company or persons whomsoever, and denies that on the assurance that the said suit would not be prosecuted and would be dismissed or at all the said M. G. Nease crowded or hurried the timber cruisers under his employment, and denies that he ever at any time insisted that any of said cruisers average at least 320 acres of land cruised per day, and denies that the said Nease ever at any time instructed any of said cruisers to include in their estimate lands which they knew to be unpatented and not taxable, knowing that the same was in violation of any of the terms of said contract, or at all.

XXII.

Referring to the allegations contained in paragraph thirty of said separate defense and counterclaim, this plaintiff denies that any of the lands for the cruises of which the said M. G. Nease presented his claim to the board of county commissioners of Clearwater county were lands on which no timber was standing or growing, and denies that any of said lands were untimbered, and denies any knowledge as to whether any of said lands were unpatented or not subject to taxation, and alleges the fact to be that if any of the lands so cruised by the said M. G. Nease were unpatented lands or then untaxable, that the same were cruised by the said Nease at the special instance and request of the defendant county and for

the reason that all of the same were then considered by the said defendant county to be lands which were about to pass to private ownership and become taxable under the laws of the State of Idaho. Denies that any of the work done by the said Nease under his said contract and for which warrants were issued to him by the defendant county in payment was unauthorized or in violation of any of the terms of his said contract with the said defendant county, but alleges the fact to be that all of said work was done at the instance and request of said defendant county and in conformity to said contract.

XXIII.

Referring to the allegations contained in paragraph thirty-one of said separate defense and counterclaim, this plaintiff denies that any of the persons who were county commissioners at the time of said contract was entered into, save and except Frank Zelenka, was defeated at a general county election, and alleges the fact to be that none of the then county commissioners, save and except said Zelenka, was a candidate for any county office, at the election referred to in said paragraph, and denies that the then county commissioners, or the said Nease, in anticipation that any of said commissioners would not be re-elected, or at all, made haste to return to the defendant county books purporting to show estimates, topographical maps in compliance with the said contract, and denies that purported warrants were issued and registered in payment therefor without careful or any checking by the then board of county

commissioners of the defendant county to ascertain whether or not the work had been performed pursuant to the terms of said contract, or whether the county was issuing warrants in payment for cruising and estimating a large quantity of nontaxable nonassessable or untimbered land; but this plaintiff alleges the truth in that regard to be that the defendant county, during all the time while the said Nease was engaged in the performance of his said contract, had and kept in its employ one John F. Gorman to check and inspect as it progressed the work done by the said Nease and his cruisers, and that the said John F. Gorman, for and on behalf of the defendant county, did, during all of said times, check and inspect said work and all thereof, and that a careful examination was made by the defendant county and its then board of county commissioners of the work of the said Nease under his said contract, and of the claim made by the said Nease thereunder before the issuance of any warrants therefor to the said Nease, and that, before any of the warrants now owned by this plaintiff and described and mentioned in its bill of complaint herein were issued to the said Nease, a claim, for and on account of which the same were so issued, was duly and regularly made to and filed with the then board of county commissioners of the defendant county, duly and regularly examined by the said board and allowed, and warrants ordered by said board to be executed therefor.

WHEREFORE, this plaintiff prays as in its bill of complaint it has already prayed, and that the relief prayed for by the defendants in their said ans-

wer be denied, and that each and every of the warrants now owned by this plaintiff, and more fully described in its bill of complaint, be adjudged and decreed to be a valid and subsisting warrant of the said Clearwater county according to the amount and according to the tenor thereof, and that this plaintiff be adjudged and decreed to have a valid and subsisting claim against the defendant Clearwater county for the aggregate amount with interest for which said warrants were issued.

GEORGE W. TANNAHILL,
PETERS & POWELL,
JOHN H. POWELL,
Attorneys for plaintiff.

(Duly verified.)

Endorsed: Filed April 20, 1916.

W. D. McReynolds, Clerk.

By M. W. Griffith, Deputy.

(Title of Court and Cause.)

AMENDMENT AND SUPPLEMENT TO PLAINTIFF'S REPLY.

Comes now the plaintiff, and by leave of court, first had and obtained, files this Amendment and Supplement to its Reply herein.

I.

Referring to Paragraph 25 of the affirmative matter of the defendant's answer, this plaintiff denies that any of the indebtedness referred to in said paragraph was not for an ordinary and necessary expense incurred by the defendant county, under the

general laws of the State of Idaho, and alleges the fact to be, that all of the indebtedness for which each of the warrants mentioned in the plaintiff's bill of complaint, was drawn and issued, was such a necessary and ordinary expense.

II.

Referring to Paragraph I of the defendants' amendment to their answer, this plaintiff denies that P. H. Blake and the Board of County Commissioners of the defendant county, and M. G. Nease, or any of them, fraudulently or collusively, or at all entered into any agreement that the said Nease was to be given a contract to cruise any of the timber in Clearwater County, at a price in excess of a fair and reasonable price therefor, and denies that the said parties, or any of them, agreed to award said contract to the said Nease without competition.

III.

Referring to Paragraph II of the defendants' amendment to their answer, plaintiff denies that M. G. Nease, P. H. Blake, the Board of County Commissioners, or any of them, ever at any time, with the design to prohibit competition, or fraudulently, or with an intent to let any contract to the said Nease for cruising timber at a higher price than was fair or reasonable, permitted the said M. G. Nease to cancel his contract bearing date the 24th day of February, 1914, or to enter into a new contract on the 15th day of April, 1914, or at all.

IV.

Referring to Paragraph III of the defendants'

amendment to their answer, plaintiff denies that the said M. G. Nease, and the said Board of County Commissioners, and the said P. H. Blake, fraudulently permitted the said M. G. Nease to cruise any un-taxable lands, the title to which was then in the State of Idaho or in the United States Government.

V.

Referring to Paragraph V of the defendants' amendment to their said answer, plaintiff denies that the Board of County Commissioners of defendant county, and the said M. G. Nease, or any of them, with intent to prevent any of the taxpayers of interested persons in Clearwater County, from taking action to contest the validity of the contract for timber cruising therein referred to, or at all, permitted the action of John H. Lewis, against the said Board therein referred to, or the appeal therein referred to, to remain on the docket in the District Court of said Clearwater County, for the purpose and with the intent to mislead any of the taxpayers or interested persons in said Clearwater County, or at all; and denies that the said Board and the said Nease and P. H. Blake, or any of them, knew that either of said purported actions were brought at the instance of a timber corporation, owning timber lands in Clearwater County, or knew that either of said actions would not be prosecuted or knew that either of the same would be dismissed whenever a demand was made by the said M. G. Nease, or knew that the plaintiff in said actions, John H. Lewis, had no control over either of the same.

VI.

Referring to the allegations of Paragraph VI of the amendment of defendants to their said answer, plaintiff denies that the said M. G. Nease, with the knowledge and consent of the Board of County Commissioners of the defendant county, and of the said P. H. Blake, or of any of them, or at all, hurriedly performed the work under his said contract, and denies that any of said work was inaccurate and of no value to Clearwater County for assessment purposes, and denies that the checker employed by the said County Commissioners, or any of said Board of County Commissioners, knew, or had reason to know that any of the work of the said M. G. Nease was incompetent or of no value to Clearwater County; and denies that said checker never filed any record of his work, and denies that the reports of said checker were delivered either secretly or privately to the said Board of County Commissioners, or to the said P. H. Blake or to any of them.

WHEREFORE, the plaintiff prays as in its Bill and Reply it has already prayed.

GEORGE W. TANNAHILL,
Attorney for Plaintiff.

PETERS & POWELL,
Attorneys for Plaintiff.

Service accepted May 10, 1916.

FRED E. BUTLER and

JOHN R. BECKER.

Endorsed: Filed May 10, 1916.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

DECISION.

Dietrich, District Judge:

The plaintiff holds by assignment warrants of the defendant county in the principal sum of \$44,072.69, which were issued in 1914 to one M. G. Nease in final payment of a contract dated April 15, 1914, for the cruising of its timber lands for taxation purposes. Altogether Nease cruised 503,997 acres, at the contract price of twelve and one-half cents per acre. The first warrants issued were paid in due course, and all those now outstanding are here involved. The county treasurer, questioning their validity, declined payment, and threatened to divert to the discharge of later warrants all the funds in his hands, whereupon the plaintiff brought this suit for an injunction to restrain him from carrying out his purpose, and requiring him to recognize and pay all warrants in the order of their issuance. Several defenses are interposed. It is charged, (1) that the contract was the result of a collusive and corrupt agreement between Nease and the County Commissioners; (2) that the claims upon which the warrants were issued were, pursuant to such fraudulent and collusive understanding, wrongfully allowed; (3) that the contract was improvidently entered into by the board, and the price agreed to be paid was excessive; (4) that the contract was never substantially performed by Nease; (5) that in part the warrants cover claims for the cruising of lands which were not within the terms of the contract; (6) that under the laws of

the State of Idaho the subject matter of the contract is not within the jurisdiction of the board of county commissioners; (7) that the action of the board in letting the contract is violative of Section 3 of Article 8 of the Constitution of the State, in that the expense is greatly in excess of the revenues provided in the year for which it was incurred, and it was not authorized by a vote of the electors of the county, and was not an ordinary and necessary expense; (8) that upon their face the warrants are so defective in form that the treasurer is not bound to recognize them; and (9), that the treasurer is without authority to pay them because the claims for which they were issued have never been certified as required by law.

I do not attempt to review the evidence upon the issue of collusion or conspiracy. It is necessarily circumstantial, and, as is usually the case, it takes a wide range and is voluminous. Though the view may be entertained that the commissioners acted improvidently and were wanting in vigilance and care, I am convinced that they were not actuated by corrupt motives. The inculpatory circumstances surrounding the letting of the contract may all reasonably be referred to their inexperience in public affairs and their real, even though somewhat grotesque, fear of the so-called "timber companies;" and likewise their want of vigilance in requiring strict performance, and their complacency in allowing the claims as presented may very well be explained by their confidence in and reliance upon the assessor's approval, and their apparent assumption, so general-

ly indulged by the unsophisticated, that the sworn verification of a claim against the public is a sufficient guaranty of its correctness.

There is a measure of interdependence between the next two defenses that makes it desirable to consider them together. The defendants contend that the agreed rate of twelve and one-half cents per acre was an excessive price to pay for cruising, and that in material respects the contractor failed to render the service called for by the terms of the agreement. I am inclined to think that one contention or the other, if not both, must be sustained, for the record leaves no doubt in my mind that twelve and one-half cents per acre is greatly in excess of a reasonable compensation for that which was actually done. We are without complete knowledge of the exact amount expended by the contractor, but we are possessed of sufficient facts from which to draw reasonable inferences and upon which to make reasonable estimates touching the cost of the work, and exclusive of such compensation or profit as should be allowed to the contractor I am inclined to think the aggregate amount he expended did not reach fifty per cent of the contract price; and after making a liberal allowance for his service in promoting and carrying on the enterprise, the interest on his investment, and contingencies, there would still be left a margin of between fifteen and twenty thousand dollars. The contractor, as well as his bookkeeper, was present in court, and was represented by counsel, and could doubtless have furnished us with exact and complete

data, with the exception of certain simple overhead charges, which could easily be apportioned, but neither he nor the plaintiff seemed to be willing to disclose the facts. It is true, as suggested at the trial, that generally the profit which a contractor realizes upon a single contract is not determinative of the reasonableness or unreasonableness of the contract price, but this contract is to be distinguished from those involving factors of great uncertainty, such, for example, as construction and builders' contracts. The factors of uncertainty were almost negligible. Cruisers, it was well known, were available, and they could be had at going wages, the possible fluctuations in which could be covered by a small margin. The cost of material and supplies could be closely calculated, and in any event the item was comparatively small. In view therefore of the nature of the subject-matter of the contract, and of the further fact that it was performed under normal conditions, there being no subsequent occurrence or development to render it unexpectedly profitable, the actual profit realized, being excessive, may properly be taken as a circumstance tending to show either that the price agreed to be paid was exorbitant, or, the contract being indefinite, that less was done in its performance than was originally contemplated by the parties. There is no direct or very satisfactory evidence that twelve and one-half cents per acre for cruising is necessarily excessive, and indeed for cruising of a certain sort such compensation would be quite inadequate, and possibly therefore the disparity between

the price paid and the cost of the work is material only insofar as it throws light upon the question of what the parties originally contemplated, for unfortunately the contract fails to express their understanding upon the very material question as to what system should be employed in making the cruise. It provides for "a careful, complete and thorough cruise and estimate of all the timber on patented lands" in the county, with the exception of such lands as the board of commissioners might for certain reasons from time to time withdraw. Thereupon follow these paragraphs:

"That upon said cruise being made from time to time, the second party agrees to make reports of said cruise, said reports to contain topographic sketches showing the elevation of lands above sea level, taken by means of Aneroid barometers, said reports to show all openings, burns, marshes, rivers, lakes, creeks, trails, roads, waterfalls, valuable stone, mineral out-croppings and all other topographic features observed by the cruisers, said reports and sketches to show a general description of the character of the lands cruised, describing its adaptability for agriculture, grazing or other purposes after the timber is removed, said reports to describe the character of the different varieties of timber, giving the average stump diameter, the average number of 16-foot logs per tree, the percentage of surface-clear timber, said reports to describe logging conditions, showing distance to outlet

such as railroads or driving streams; said reports to show damage by fire or otherwise, and the probability of fire; and will furnish all blue prints, blanks and binders for reports at his own expense, and all reports herein agreed to be furnished to said first party shall be upon such quality of paper and of the size and form and contain all data above provides accordingly as shall meet the approval of said first party."

"That in making said cruise the second party shall use as a basis in estimating saw timber all trees having not less than a 12-inch stump diameter to an 8-inch top, and as a basis in estimating cedar poles all cedar trees not included as saw timber which have a top diameter of not less than six inches 25 feet above the stump, all fir and tamarack which shall not be classed as saw timber shall be designated and counted as ties, and for this purpose a tie shall be considered as being eight feet long and of standard dimensions."

It is also provided that in case the cruise of any tract "shall be disputed and the owner of the timber so cruised desires to have the same re-cruised, and the board of commissioners shall make demand therefor," another cruise shall be made by a cruiser satisfactory to both parties, the expense of which is to be borne by the contractor if the new cruise varies more than twenty per cent from the old; otherwise it is to be paid by the county.

It is still further provided "that all cruises that shall be rejected by the first party (the county) shall

be corrected and the proper report and correct cruise included therein shall be made by the second party accordingly as directed by the first party, and if the second party fails so to do" the county may make such correct cruise at his expense.

In employing cruisers to do the work in the field the contractor required them to assent in writing to instructions of the most rigorous character touching numerous particulars, but both the instructions, and, as already suggested, the contract, fail to specify any particular system of cruising. The contract calls for "a careful, complete and thorough" cruise, but it develops that the most careful cruise that it is possible to make under a given system may be less thorough or more thorough than an equally careful cruise under some other system. It is further to be understood that no cruise is free from a measure of uncertainty. At best there are various factors which must be left to the individual judgment of the cruiser, and absolute accuracy is unattainable. But it does not follow that because cruising involves the exercise of judgment and it is therefore at best but an estimate, one system is as thorough or as efficient as another. It would seem to be the view of some of the cruisers who testified in relation to certain wide discrepancies disclosed in the Nease cruise that cruising is necessarily so inexact that it is impossible to fix the maximum percentage of reasonable error for a careful and thorough cruise of any given subdivision, and that even upon large tracts it may exceed one hundred per cent. But the weakness of such

testimony is that it proves too much, for in fact it would discredit all cruising and make of it a mere farce. Checking a cruise would be impossible, for if there is no limit to the margin of reasonable error then it would be useless to discover error, for, however erroneous, the cruise might still be deemed to be a careful and thorough one, and there would be no way of satisfactorily proving error, for the checker's cruise would necessarily be subject to the same infirmity as the original estimate. Nor am I disposed to give place to the view that generally speaking a "single run" is as reliable as a "double run". True, if we assume absolute uniformity in density of stand, kind and size and quality of trees, it might very well be that the accuracy of one would approximate that of the other, but of course upon such assumption we might as well dispense with even a single run, and estimate a single acre selected at random anywhere upon the tract. But to say that in the section under consideration, where, as is abundantly shown, the several prevalent varieties of timber sustain no uniform or fixed relation one to the other, and where there is always more or less variation in the size of trees and in the density of their stand, and where there is a wide range in the percentage of defective and sound timber, and where elevations, contours, and character of soil must be observed and reported, a cruiser, however careful and competent, can as thoroughly learn the facts upon which to exercise an intelligent judgment as to the number of feet of

merchantable timber of each variety growing on the forty-acre tract by going through it once and observing and estimating the trees growing on a strip four or six rods wide as would be possible should he estimate two such strips at the proper distance apart, is to traverse our common sense. In either case he must, in extending the result of his strip-estimate to the entire subdivision, make allowance for conditions which he does not encounter in his course, but which in the one case he must observe and appraise, if he can observe them at all, at a maximum distance of forty rods, whereas, in the other case the most distant point from his own course is but twenty rods.

It further appears in evidence that in general practice the number of "runs" ranges from one to sixteen, and apparently anything less than a single run is not considered a cruise at all. It is further shown that upon a high percentage of the lands for which the warrants in question were issued the cruise was made by a single run, and with the knowledge of and without objection on the part of the contractor; and I am inclined to think in some cases at least upon his express direction. We have this further circumstance which is not wholly without significance: On February 24, 1914, a similar contract had been entered into between the parties, the validity of which, however, had been promptly called into question through an injunction suit instituted by one Lewis, a taxpayer, who, it afterwards turned out, was acting in conjunction with, if not at the

behest of, certain of the large timber companies. By mutual agreement this contract was afterwards cancelled, and upon the same day the contract under consideration was executed, and thereupon Lewis took an appeal to the courts from the action of the board in entering into the second contract. Cruising had been commenced under the old contract, and was continued until about the time the appeal was taken, whereupon the men were called in from the field and nothing more was done until August. A very large percentage of the spring cruise was double-run, with the added safeguard of a checker in the field, but upon the resumption of the work in August, as already stated, the single run was generally employed, and while the testimony is not positive upon the point, the inference is fair, that no check at all was made. And of course it is not surprising to find that the average cruise per man per day in the fall greatly exceeded that of the spring. Indeed the areas covered in a single day sometimes approximated a section, and it is difficult to believe that where such wide areas were being covered in a day the facts reported to the county were carefully or thoroughly gathered. To be sure, there is the suggestion in the testimony of one of the cruisers that at least at one time he put in an unusually long day, but all of the men were paid what appears to be only going wages, without other emoluments, and it is not reasonable to suppose that in the absence of some incentive for so doing they generally gave more than the customary amount of service per day.

According to the terms of the contract the cruising was to be completed on or before the 15th day of June, but as already stated, the men were withdrawn from the field about the time the Lewis appeal was taken, and nothing was done until some time in August. In the meantime, it having become known to Nease that some of the timber interests were back of the litigation, he entered in conferences with them for the purpose, as he states, of assuring them of his intention to make a fair cruise, and at some time during the summer he seems to have been led to believe that the suits would be withdrawn. No dismissal, however, either of the injunction suit or of the appeal was had until about the middle of October, when the cruise was practically complete, at which time there was a voluntary discontinuance of both of them. It further appears that comparisons were made by representatives of some of the timber companies of their cruises with those which Nease's men were reporting, but on the whole it does not appear from the evidence upon this head that either the conference or such comparisons had any direct effect upon the reports which Nease made to the county, and perhaps no legitimate inference can be drawn other than that, under the circumstances, the pendency of the suits questioning the validity of the contract taken together with Nease's desire to have them dismissed may have, consciously or unconsciously, incline him to avoid antagonizing the owners of the timber lands, by making reports which were unsatisfactory to them. That in many in-

stances there was wide discrepancy between his cruise and the cruises of the timber companies is admitted, and that in a number of cases his reports are but crude approximations I have no doubt. In some respects his instructions to the cruisers were, without objection upon his part, habitually ignored, and on the topographical maps, estimates, not actual measurements, of elevations are so noted as to leave the impression that a double run of every legal subdivision was made.

From an examination of the record made by the board of commissioners at the time the contract was let, and a consideration of the manner in which it was gotten up, it is clear that the board expected a thorough and accurate cruise, and that Nease convinced them, that that was the kind of cruise he would make. In his written offer, which was accepted, he proposed to make "a very careful" cruise, and, as we have seen, the contract calls for "a careful, complete and thorough" cruise. Can we say that the requirement of thoroughness was met by a cruise made through the employment of the cheapest and least thorough of all recognized methods, or that the requirements of carefulness and completeness were satisfied when the areas daily covered by the cruisers were of unusual, if not extraordinary, extent? The question is suggestive of but one answer. When we consider that for a fairly reliable cruise the double run system is most commonly employed, and that the spring cruise here was generally made in that manner, and when we further consider the

fact that the topographic notations were so placed upon the maps as to signify that a double run was in fact made, and further that the price paid was to say the least adequate fully to pay for such a cruise, it is difficult to escape the conclusion that at the time the contract was entered into both parties contemplated a double run. It is of no avail to say that upon averaging up large areas the cruise made will give a fair approximation of the aggregate. It may also be true that a rough estimate of most of the lands would, in a general average, approximate the result of a single run cruise, and it may be that either would enable the assessor to make as fair a valuation of the timber lands as is commonly made upon other classes of property. But that is not what the county contracted for. It could have gotten a rough estimate or a hasty single run cruise for a fraction of what it agreed to pay, and whether the action of the board be deemed to be prudent or imprudent in contracting and agreeing to pay for details and a degree of accuracy the value of which is more apparent than real, the county is entitled to receive what it is asked to pay for.

The question still remains whether the defendants can now avail themselves of this defense, and in considering it we shall assume that while the plaintiff purchased the warrants in the open market for value, it holds them subject to all the defenses which would be available against the original payee. *Abbott's Public Securities*, Sec. 450. *City of Nashville v. Ray*, 86 U. S. 468. *Wall v. County of Monroe*, 103 U. S.

74. There is no charge in the answer that the county commissioners were deceived or that they were fraudulently induced to audit and allow the claims and order the issuance of the warrants. Upon the other hand, it is expressly alleged that, notwithstanding complete knowledge of the inadequacy of the cruise and its inaccuracies, the board deliberately allowed the claims. While I do not think this averment of complete knowledge is substantiated by the evidence, and while there are certain circumstances, especially that of the misleading "elevation notations", which I have heretofore explained, tending to show a purpose on the part of the contractor to deceive, plainly in the face of the express charge of the possession of full knowledge by the board we are not now at liberty to find that the issuance of the warrants was induced by fraud. The fact that the board did not exact strict performance is not conclusive. If they had the power to make the contract they also had the power to waive some of its provisions. In the absence of fraud or collusion the courts cannot, in an action of this character, revise the discretion of the board touching matters within their jurisdiction. Against the improvidence and folly of county commissioners the taxpayers' remedy is by way of appeal to the courts as provided by statute, and that remedy is simple, inexpensive, and ordinarily adequate. Such an appeal was here taken by Lewis. Doubtless feeling the strain at this point, the defendants allege that by a collusive understanding between Nease and the county commissioners

and Lewis that suit was fraudulently kept alive until the time for other taxpayers to appeal had expired, and then was dismissed, all for the purpose of deceiving the other taxpayers and inducing them to remain inactive. But this contention cannot be sustained. There never was an understanding on the part of either Nease or the commissioners that the appeal should be taken, or that it should be maintained after it was taken. Doubtless the board desired that it be dismissed, and in that there was no impropriety. Administrative discretion must be lodged somewhere, and after a board of county commissioners has in good faith acted upon a matter within its jurisdiction, though carelessly and improvidently, and no appeal is taken, the order becomes final, and is not subject to collateral attack.

The fifth defense is that in part the warrants cover claims for the cruising of lands which are not within the terms of the contract. The facts under this head are simple, and practically undisputed. The contract calls for the cruising of the patented timber lands of the county. Upon the plats returned by Nease it is shown that his claims covered, and warrants were issued for, a little more than 110,000 acres of untimbered lands, that is, lands embracing legal subdivisions of forty acres or more wholly devoid of timber. It is also shown that the allowed claims covered 26,706 acres of Government lands, none of which were taxable prior to January 1, 1915, and to most of which no private claim of any kind had been initiated. It is also shown that included

within the total amount for which charge was made there were approximately 4400 acres of land belonging to the State of Idaho, which were entirely free from any private claim and were non-taxable.

As to this last group the plaintiff concedes that the contractor should not have been paid therefor, and the only explanation offered is that the lands were cruised and included, and the claims presented, through inadvertence.

As to the 26,700 acres of Government land, it appears that some time after the contract was executed, in an informal manner, some, and possibly all, the members of the board of county commissioners assented to a suggestion that in the course of the cruise isolated tracts of Government land might be included. No record was ever made of such understanding, but at the time the bills were allowed the board understood that they covered some Government lands, though it is doubtful whether they were conscious of the magnitude of the aggregate amount. The 110,000 acres of untimbered lands are scattered throughout the timbered sections of the county, ranging from forty acres to tracts now and then exceeding a section in extent. Inasmuch as the condition of these lands is disclosed by the plats and reports made by Nease it must be assumed that the commissioners had knowledge thereof, and with such knowledge allowed the claims. While, therefore, we may dissent from the judgment of the board in paying at the rate of twelve and a half cents an acre for a report upon such lands, the allowance of the

bills with knowledge of the facts must be deemed to be conclusive upon the county unless, in view of principles later to be discussed, it is held that such action was *ultra vires*. The Government land and state-land warrants are subject to similar considerations, and their status also will later receive attention.

The other four defenses are largely concerned with questions of law, and involve no controverted facts other than those already discussed. The defendants first contend that the matter of valuing property for assessment purposes is by the constitution and the statutes of the state vested exclusively in the assessor, and that a way is provided by which he can have the assistance of such deputies and clerical service as will enable him properly to perform the duties of his office, and that it is the function of the board of commissioners to prescribe and provide the compensation to be paid for such assistance. It is pointed out that in the present case the contractor and his cruisers were non-residents of the State, and that none of them ever qualified or was entitled to qualify as an officer of the county; and that the cruise has no legal status and cannot be accepted as a valuation for assessment purposes, and is binding upon neither the assessor nor the taxpayer. It is argued that the constitution and statutes having imposed upon a certain officer the duty of making the assessment, and having prescribed the method in which the duty is to be performed, and provided the means by which the officer charged with the duty can secure the requisite assistance, such method and means should

be held to be exclusive. *Blomquist v. Board*, 25 Idaho 284. With certain qualifications I am inclined to think that the position must be sustained. The county commissioners also sit as a board of equalization, and as such board it is their duty to equalize valuations in their county, to the end that every kind of property shall bear its just burden of taxation. When we consider this important function and their further general duty as a board of commissioners to exercise supervision over the county's interests, it will be going too far, I think, to hold that they are wholly without authority to incur expense in securing information which will enable them intelligently to perform these functions. But upon consideration I have been constrained to the conclusion that this power does not extend so far as to warrant them in having the assessor's work done in any way other than that prescribed by law. The record here leaves no doubt that the primary purpose for which the cruise was made was for the assessor's use. The constitution of the State (Section 6 of Article 18) provides for the election biennially of a county assessor whose duty it is to value all property in the county for assessment purposes. Section 2119 of the Revised Codes, as amended in 1913, (Session Laws, P. 474), authorizes the board of county commissioners to empower the assessor to appoint such clerical assistance and such deputies as the business of the office may require, and to fix their compensation. It is further provided, however, that such power may be exercised only upon the application of the assessor

after thirty days public notice. If, after such notice, upon a hearing, at which any taxpayer may appear in opposition, the board finds an existing necessity, it may grant the application. Now what reason can be assigned for ignoring this method, and, by resorting to the one here employed, depriving the taxpayers of the statutory right to be heard? Admittedly no sudden emergency had arisen. Assuming that a cruise was needed, why could it not as well have been made under the direction of the assessor, by qualified deputies appointed for that purpose? Possibly the assessor was not himself an experienced cruiser; but neither was Nease. Presumably in appointing his deputies and clerks the assessor selects persons qualified for the particular duties to which they are assigned. One man may be expert in the matter of valuing farm lands, and another may have had experience exclusively with values of city property. The assessor in this particular case was an intelligent business man, a banker, and, so far as appears, was qualified to select competent clerical assistance, and experienced cruisers as deputies. There would thus have been no motive for slighting the work, and no occasion for conferences with the large taxpayers as it progressed. And when it was completed the result would have had the sanction of law and a legal status. Whether it could or could not thus have been done more cheaply is perhaps immaterial to the present inquiry, but I have no doubt that a great saving could have been made. And of what value will this contract-cruise be to the county? What use

can be made of it? Technically, it is true, it does not constitute an assessment, and in form it is therefore not obnoxious to the objection that it was unofficially made, but when we consider the substance rather than the form, does it not in effect constitute the assessment? In order to sustain the validity of the warrants against attack upon a different ground, the plaintiff has uniformly contended, and now contends, that the cruise is indispensable to the assessor. He cannot, so it is claimed, place a valuation upon the timbered lands without it; it is practically his only source of information. If this be true, manifestly these unsworn, unofficial, non-resident cruisers have, in effect, if not in form, fixed the value of this vast acreage of timbered land for assessment purposes. The assessor sits in his office, and, imputing verity to the information thus furnished him, values the land accordingly. He can exercise no judgment or discretion, for by hypothesis his office knows no facts other than those disclosed by these reports. The assessment comes to be a matter of making certain computations and entering the result thereof upon the assessment book, merely a clerical function. Plainly, therefore, by this contract the interests both of the public and of the taxpayers were in effect committed to non-resident cruisers, unofficially employed, without official responsibility, and exempt from official direction or control. Is it not suggested by the plaintiff that the reports would constitute competent evidence in any statutory proceeding or judicial hearing. That being so, the board of equaliza-

tion could not properly weigh them as against a proper showing made by a taxpayer in his effort to reduce or prevent the increase of a proposed valuation of his property. It would seem, therefore, that the reports could be legitimately used only for the purpose of suggesting the possible need of investigation; that is, if they differ materially from the valuations which the assessor has been or is placing upon certain lands, the discrepancy may justify the board of equalization in making an investigation for the purpose of ascertaining the facts. Thus indirectly the cruise, if found to be reasonably accurate, would be of some assistance to the commissioners in the performance of their duties. But it is not thought that this indefinite benefit, small as compared with that of a cruise made through official channels, can be accepted as the basis upon which to rest the validity of the contract. Had the work been carried on by the assessor and his deputies the commissioners might very well have been justified in employing a reasonable number of cruisers to check up the estimates. They would thus have been performing their duty of supervising and correcting, but would not have been doing, the work of the assessor.

We come now to a consideration of the question of the seventh defense, that is, that the contract was entered into in violation of Section 3 of Article 8 of the Idaho Constitution. That section is as follows:

“No county, city, town, township, board of education, or school district, or other subdivision of the State shall incur any indebtedness, or

liability in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void; *Provided*, That this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general law of the State."

It is admitted that the contract created a liability for the discharge of which no revenue at all was provided during the year 1914, and that it was never authorized by the qualified electors of the county, and further that no provision was ever made for the annual payment of interest or for a sinking fund. In short, the plaintiff concedes that unless the expense thus incurred is an "ordinary and necessary" one, and hence falls within the proviso of Section 3, the entire transaction, including the warrants, was and is void. The one question for consideration, therefore, is, whether it was an ordinary and necessary expense. Unfortunately this phrase does not yield itself to a comprehensive, general definition,

and each case must be adjudged in the light of its own facts. The uncertainty in which this view leaves the fundamental law is to be deplored, but the courts cannot be expected to make specific that which the constitutional convention found it necessary to leave general.

That some of the work for which the warrants were issued was not "necessary" in any reasonable sense in which that word may be used is hardly open to argument. Even were we to accept the plaintiff's view, that a cruise was required to enable the county officers to make an assessment of timbered lands, some of the lands reported were not assessable in 1914, and some of them were not timbered, and however liberally we may construe the constitutional phrase, manifestly there was no present necessity in 1914, for incurring the expense of cruising such lands. To say that some of the 26,706 acres of Government land might or probably would become taxable in the future is aside from the point. There was no present necessity, and the constitutional proviso contemplates present necessities and not future possible economies. And why cruise an untimbered section, or, for that matter, an untimbered forty,—unless the position be taken that it was necessary to send timber cruisers out over all of the lands of the county? It was quite immaterial that an untimbered section was surrounded by timbered sections. The contractor was sent out to cruise the timbered lands, and it was thus his duty to locate by legal subdivisions all the timbered lands, but not those which

were untimbered. What need had he for reporting that a certain section had no timber upon it? If, in compliance with his instructions, he faithfully performed his contract, and cruised and returned reports to cover all timber lands in a given township, nothing more was required. The county officers were then advised by implication that the other lands of the township not so reported were untimbered, and the assessor already having their description could value them as he valued other untimbered lands in the county. Surely it was not necessary for the contractor to survey the untimbered lands to find out where the timber was; he could see the timber, and, seeing it, it was his duty to cruise it and report the amount thereof, and further to report where it was, and not where it was not. The mere fact that in running the lines of the timbered lands he incidentally and necessarily ran some of the lines of the non-timbered lands did not warrant him in claiming a cruise of the latter, and even were there no constitutional limitation, the allowance of such a claim constitutes gross extravagance. It follows that, the expense being unnecessary, and there being no funds applicable to its payment, the board was clearly without the power under the constitution either to incur or to pay it, and insofar, therefore, as they cover payment for the cruising of these three groups of land, aggregating 141,106 acres, the warrants would seem to be void in any rational view that may be taken of the scope of the constitutional proviso.

The status of the balance of the claim is not so free

from doubt. The plaintiff's position in substance is, that the phrase, "ordinary and necessary" must be given a liberal construction, that it is the duty of the county commissioners, as well as the assessor, to classify and assess all lands in their county at their actual cash value (Laws of Idaho, 1913, Chapter 58, Sections 34, 37, 38, 39, 48, 49, 56, 57, 58, 64, 65, 66, and 68), and that, such duty being imposed, the expense reasonably incurred in its performance must be deemed to be an ordinary and necessary one. It will be assumed that an expense is not necessarily extraordinary because the necessity therefor does not arise frequently, and at regular intervals. *Hickey v. Nampa*, 22 Idaho, 41, 124 Pac. 208. An expense is ordinary if it is in an ordinary class, if in the ordinary course of the transaction of municipal business or the maintenance of municipal property it may and is likely to become necessary. It will further be assumed that if by law a specific duty is imposed and the mode of performance is prescribed, so that no discretion is left with the officer, the expense necessarily incurred in discharging the duty is a "necessary expense". Referring to these principles, the plaintiff contends that the officers of the defendant county could not perform the duties imposed upon them of classifying and valuing the timbered lands without a cruise. It is true that the statutes do require of the assessor that in assessing the property of the county he "shall actually determine, as near as practicable, the full cash value of each tract or piece of real property assessed". It is also

required that for assessment purposes all lands shall be classified as agricultural, timbered, cut-over, mineral, grazing, and waste land. It is also made the duty of the county commissioners, sitting as a board of equalization, to consider all assessments made by the assessor, and to so increase or reduce his valuations that they will conform to the actual cash value of the property. Likewise it is their duty to acquire correct classifications of the lands. It is further provided that if a county commissioner "knowingly permits" a valuation to remain too high or too low he is guilty of a misdemeanor and of malfeasance in office. It is still further provided that: Any assessor who shall wilfully or knowingly enter, or suffer to be entered, any untrue or incorrect classification of lands or other property upon the assessment roll; or any member of any Board of County Commissioners who shall knowingly permit any such untrue or incorrect classification of property to stand; or any County Auditor who knowingly makes an untrue or incorrect classification of the property, as entered upon the assessment roll, in his abstract of the assessment, or fail to transmit his abstract of the assessment within the time prescribed therefor in the preceding section, shall forfeit the sum of one thousand dollars, to be recovered upon his official bond for the use of the State." Now it must be manifest that to construe these several requirements as imposing upon the officers the duty of absolute accuracy in the classification and valuation of lands is to ignore certain qualifying phrases, and is to make compliance

with the law wholly impossible. An entirely just or correct valuation of all the property in the county, if not a mere dream, is an unattainable ideal. The difficulty with the plaintiff's argument is that it goes too far. If the expense of the cruise is to be deemed to be a necessary expense only because the officers must assess with absolute accuracy and the cruise will enable them to perform this duty, the answer is that the cruise is without such efficacy. Admittedly it is inaccurate, and as to any given legal subdivision the report furnished the county may not even approximate the truth. The most that can be said is that the work will give some measure of assistance, and that valuations made upon the basis of the cruise will on the whole be less inaccurate than one made without such a cruise.

Enough has been said in this regard to illustrate the point. Obviously it is not a case where there has been imposed a definite, specific duty which is susceptible of perfect performance, and which is to be discharged in a mode particularly pointed out. The assessor is to determine "*as near as practicable*" the full cash value. If an officer shall "*knowingly or wilfully*" assess or permit to be assessed property at more or less than its cash value, he shall be punished. Such is the purport of the law. In short, the officers are to do the best they can, with the means at their disposal, to approximate as nearly as may be the unattainable ideal. The point may further be illustrated by reference to conditions of which we may take judicial knowledge, as well as facts disclosed by

the evidence. The act of 1913 did not establish a new system. It has always been the duty of the officers to assess real property under a uniform rule of valuation, and, except for a short period, at its full cash value. The principle has always been the same, and the duties of the assessor and of the board of equalization have always been substantially the same. Yet notwithstanding twenty-five years of statehood only three or four counties have ever had cruises made, and none until the last four or five years. Now will it be contended that every assessor and every county commissioner in every county for these many years has been guilty of a misdemeanor and of malfeasance in office because he has valued, and equalized the valuations of, property as best he could without such cruises? Or would anyone say that the assessor of the defendant county and the commissioners were likewise guilty because the very year this obligation was incurred they valued these identical timber lands and equalized the valuation thereof, and levied taxes, without this or any other cruise? As a matter of fact, the duty of assessing timber lands according to their actual cash value does not differ in kind from assessing other classes of lands. In any case the task is attended with difficulty, and at most the difference is one of degree and not of kind. The same reasons which are urged in support of a cruise of timber lands may be urged with but little less force in favor of a detailed survey of agricultural lands, with a report upon the topography thereof, the soil conditions, the irrigating sys-

tems, water supply, location with reference to market, schools, roads, etc., all of which and other conditions are taken into consideration when it comes to determining the actual market or cash value of such lands. But will anyone say that assessors and their deputies possess or use such detailed information? Could not an experienced timber man, acting as deputy assessor, go through the woods, with a compassman to locate the legal subdivisions, and, without a detailed cruise, but upon a general survey and estimate, appraise the value of timber lands quite as accurately as the ordinary deputy assesses agricultural lands? And will anyone assert that the three county commissioners, sitting as a board of equalization, have any detailed or personal knowledge of the conditions which must be taken into consideration in determining the actual cash value of the majority of the agricultural lands in their county? Could any one of them qualify as an opinion witness touching the value of ten per cent of such lands, if called to the stand in a proceeding in eminent domain? If they are honest, they do the best they can with the means at their disposal, and thus they discharge their duty, not because the result is accurate, but because they determine the "full cash value" "as nearly as practicable", and neither knowingly nor wilfully assess or permit to be assessed property for more or less than its actual cash value. That is the statutory measure of their official duty, and they cannot, in the face of the express prohibition of the fundamental law, defend the creation of an indebt-

edness exceeding in itself the total revenues of the county for the year, upon the ground that thereby they will be enabled to perform this duty a little more efficiently. The Idaho constitution is imbued with the spirit of economy, and insofar as possible it imposes upon the political subdivisions of the state a pay-as-you-go system of finance. The rule is that, without the express assent of the qualified electors, municipal officers are not to incur debts which they haven't the funds to pay. Such policy entails a measure of crudity and inefficiency in local government, but doubtless the men who drafted the constitution, having in mind disastrous examples of optimism and extravagance on the part of public officials, thought best to sacrifice a measure of efficiency for a degree of safety. The careful, thrifty citizen sometimes gets along with a crude instrumentality until he is able to purchase and pay for something better. And likewise, under the constitution, county officers must use the means they have for making fair and equitable assessments until they are able to pay for something more efficient or obtain the consent of those in whose interests they are supposed to act.

It must be assumed that in prescribing the duties of the assessor and the commissioners the legislature was cognizant of the conditions under which these duties must be performed, and that it was not intended to require either impossibilities or a violation of the constitution. If it was the purpose to impose upon the counties having timber lands the burden of causing them to be cruised, is it not reasonable to

suppose that such an intent would have been expressed? Every member of the legislature of 1913, doubtless knew the manner in which such lands, as well as all other property in the state, had always been assessed, and hence knew that a cruise had never been made. If the current practice had become a public scandal or was generally understood to be inequitable, and if therefore it was thought to be high time that a different method should be employed, it is strange that one was not prescribed and the means provided for carrying it into effect. For example, the legislature did see fit (Act 1913, Sec. 34) to impose upon the assessor the duty of having prepared a plat book of his county. It also prescribed the form of such book and its contents, and authorized the payment of the expense thus necessarily incurred. If a detailed cruise of timber lands was deemed to be essential, why was it not also required, with proper provision for uniform reports thereof? If cruises are to be made it is not only important that they have the sanction of law, but that they be required of all counties, and be made and reported according to some uniform system, so that they may also serve as the basis of state equalization as well as for local purposes.

The discussion need not be further prolonged. Enough has been said to make it clear that the legislature has not imposed upon the counties the absolute duty of cruising their timber lands, or of incurring indebtedness for that purpose. The county officers are required only to determine the full cash value of

property, including timber lands, as nearly as may be practicable with the means they have. They are not obligated, nor have they the right, to overstep the constitutional limitation for the purpose merely of possibly increasing the efficiency of their service. And the county commissioners have no authority to substitute for the statutory mode of valuing property a method of their own. It follows that, the premises upon which the plaintiff rests its entire contention touching the constitutionality of the contract, not being well founded, its argument falls, and the contract must be held to be void. In any other view the constitutional prohibition would in practice prove to be a mere thing of straw. If this contract can be sustained, by parity of reasoning another of like character, for a second cruise, can be made at any time. Of necessity conditions change from year to year. Some trees are growing and others are being cut down or otherwise destroyed, and still others are deteriorating in value. Another cruise would doubtless be of some value. Again: It is the duty of the county commissioners to provide buildings and other facilities for the transaction of county business. Temporary quarters may be cheaply built or rooms may be rented, and thus the county may keep within its revenues. But such provision is not so well adapted to the public need as a permanent court house. Doubtless a modern building constructed according to approved plans would answer the purpose better, and would be more efficient than a temporary structure or rented quarters. But may the county commission-

ers, therefore, without asking the assent of the electors, proceed to erect such a structure, and thus impose upon the county a large indebtedness? See *Bannock County vs. C. Bunting & Co.*, 4 Idaho 156; 37 Pac. 277. *Dunbar vs. Board of Co. Com.*, 5 Idaho, 407; 49 Pac. 409.

I have not overlooked the case of *Wingate v. Clatsop County* (Ore.), 142 Pac. 561, nor shall I attempt to distinguish it upon unimportant differences either of fact or of constitutional or statutory phraseology. It is to be conceded that the limitation there involved, under the construction placed upon the Oregon Constitution, is the equivalent of Section 3, Article 8, of the Idaho Constitution. Furthermore, as has already been made plain, I accept the view "that a voluntary indebtedness is one which a county is at liberty to evade or postpone until means are provided for the payment of the expenses incident thereto, while an involuntary indebtedness is a liability imposed upon a county by law, and which it is not privileged to evade or postpone." But with all due respect for the court, the reasoning by which the conclusion is reached that the cruising of its timber lands constituted a duty which the defendant county could not postpone, I have been wholly unable to appreciate. It seems to me to entirely break down the protection which the constitutional provision was intended to vouchsafe. The statutes of Oregon may in some respects differ from those of Idaho; I have not undertaken to analyze them. But however that may be, to say that under the Idaho Statutes the duty of cruis-

ing its timber lands is one which a county must immediately perform and cannot postpone, would, it is thought, be contrary to both reason and experience. Though legislature after legislature has convened, the members of which have had knowledge of a contrary practice, not exceptional but universal, and though the revenue laws have often been the subject of public discussion, and have frequently been revised and amended, and new provisions have been added imposing specific duties upon the county officers with a view to a more complete and uniform valuation, the statute books have always been, and are, silent upon the subject of cruising. If it is absolutely obligatory upon the county to incur the indebtedness for cruising its timber lands, and if the obligation is thus involuntary, and must be discharged without evasion or delay, then as a matter of course a writ of mandate should issue to the board of county commissioners of every county in the state where there is timber land, requiring an immediate cruise to be made. And yet, insofar as I am advised, no executive or administrative officer or private citizen has ever applied for such a writ. For a generation the legislative and executive departments of the government and the public at large have acquiesced in the view that there is neither constitutional nor statutory duty to incur such indebtedness. If in a county having a total revenue of less than \$55,000.00, with ordinary and necessary expenses aggregating approximately \$60,000.00, an additional item of expense of \$63,000.00 incurred by the commissioners for something

which, under like conditions and similar laws, had never before been deemed to be necessary and without which other counties, similarly situated, had gotten along for a quarter of a century, can be held to be an "ordinary and necessary expense" the citizen may very well ask what is an extraordinary or unnecessary expense and against what sort of a transaction does the constitution afford him protection.

The view which I have taken of the constitutional question being decisive of the case, it is unnecessary to discuss the other two defenses, which are of a technical nature. The bill will be dismissed, with costs to the defendant.

Endorsed: Filed July 31, 1916.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

CORRECTION OF STATEMENT OF FACTS.

(Sept. 11, 1916.)

Dietrich, District Judge.

Before signing and filing the decree in this case, my attention has been called to an erroneous construction which I placed upon Defendant's Exhibit No. 19 in preparing the original opinion, especially touching the amount of untimbered lands embraced in governmental subdivisions wholly devoid of timber. Upon examining the witness Becker's testimony the statement seems to be inaccurate, and while the inaccuracy in no wise affects the general conclusions reached, it is my desire that the opinion be altered so as to more strictly conform to the facts. Accord-

ingly the paragraph beginning with the words "The fifth defense," on page 12 of the opinion, will be amended to read as follows down to the bottom of page 12:

"The fifth defense is that in part the warrants cover claims for the cruising of lands which are not within the terms of the contract. The facts under this head are simple, and practically undisputed. The contract calls for the cruising of the patented timber lands of the county. Upon the plats returned by Nease it is shown that his claims covered, and warrants were issued for, a little more than 110,000 acres of untimbered lands. In this total acreage it is found that there are legal subdivisions, wholly devoid of timber, aggregating 35,762 acres. It is also shown that the allowed claims covered 7,680 acres of untimbered Government lands (these are embraced in the 35,762 item), and 26,706 acres of timbered Government lands, none of which were taxable prior to January 1, 1915, and to most of which no private claim of any kind had been initiated. It is also shown that included with the total amount for which charge was made there were approximately 4,400 acres of land * * ", and so much of the paragraph as in on page 13 will remain unchanged.

A further alteration will be made by changing the phrase "forty acres," near the middle of page 13, to "a very small acreage."

Endorsed: Filed Sept. 11, 1916.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

DECREE.

This cause came on to be heard at Moscow, in Latah County, State of Idaho, on the 8th day of May, 1916, and evidence was introduced, both oral and documentary, and the cause was argued by counsel for the respective parties and taken under advisement.

And thereupon, upon consideration thereof, it was ordered, adjudged and decreed that plaintiff's bill be and the same is hereby dismissed and that defendants recover their costs herein in the sum of \$535.60.

Done this 11th day of September, 1916.

FRANK S. DIETRICH,
Judge.

Endorsed: Filed Sept. 11, 1916.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between the plaintiff and the defendants that the plaintiff shall have until the first day of January, 1917, within which to prepare, serve and lodge with the clerk of the above entitled court its statement of the evidence to be used upon appeal, as required by Subdivision (b) of Rule 75 of General Equity Rules, and that such statement, prepared, served and lodged as aforesaid, on or before said date, shall have the same force and effect as if so prepared, served and

lodged before the expiration of the term of the above entitled court at which the above case was tried and judgment therein entered.

Dated this 24th day of October, 1916.

PETERS & POWELL and
GEO. W. TANNAHILL,
Attorneys for Plaintiff.

FRED E. BUTLER and
JOHN R. BECKER,
Attorneys for Defendant.

Endorsed: Filed Oct. 27, 1916.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

ORDER GIVING PLAINTIFF TO JAN. 1, 1917,
TO LODGE STATEMENT OF EVIDENCE.

Now, on this day, upon motion of the plaintiff and upon the stipulation filed in this cause, it is hereby

ORDERED that the plaintiff shall have until the first day of January, 1917, within which to prepare, serve and lodge with the clerk of the above entitled court its statement of the evidence to be used upon appeal, as required by subdivision (b) of Rule 75 of General Equity Rules, and that such statement, prepared, served and lodged as aforesaid, on or before said date, shall have the same force and effect as if so prepared, served and lodged before the expiration of the term of the above entitled court at which the above case was tried and judgment therein entered.

Done in open court this 27th day of October, 1916.

FRANK S. DIETRICH,
Judge.

Endorsed: Filed Oct. 27, 1916.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

NOTICE.

To the Above Named Defendants and to Fred E. Butler and John R. Becker, Their Solicitors and Attorneys:

You, and each of you, are hereby notified that the Dexter Horton Trust and Savings Bank, plaintiff above named, has heretofore, on the 30th day of December, 1916, lodged in the office of the Clerk of the U. S. District Court at Moscow, Idaho, for your examination, a statement of the evidence in the above entitled cause, and of the facts occurring at the trial thereof, for certification on the appeal of the plaintiff from the final judgment rendered therein by said court on the 11th day of September, 1916, to the Circuit Court of Appeals for the Ninth Circuit.

You are also further notified that the plaintiff will at 10 o'clock A. M. on the 25th day of January, 1917, at the court room of the U. S. District Court, at Boise, Idaho, ask the Hon. Frank Dietrich, Judge of said court, before whom said cause was tried, to approve said statement.

PETERS & POWELL,
Attorneys for Plaintiff.

Service of the foregoing notice accepted by receipt of copy admitted this 30th day of Dec., 1916.

FRED E. BUTLER,
Attorney for Defendants.

Endorsed: Filed Jan. 2, 1917.

W. D. McReynolds, Clerk.

By M. W. Griffith, Deputy.

(Title of Court and Cause.)

STIPULATION.

In this action notice having been prepared, served and filed that the Statement of the Evidence and Bill of Exceptions would be settled before the Court at Boise, on the 25th day of January, A. D. 1917, at Ten o'clock A. M. of said day, and the parties hereto having received notice from the Clerk of the above entitled court that the Hon. Frank S. Dietrich, Judge of the above entitled court, is absent from the State of Idaho, and is now in the State of New York, and will not return in time for the settlement of the evidence and the bill of exceptions as per notice heretofore served and filed, it is STIPULATED and AGREED that the statement of the evidence and bill of exceptions, or both may be taken up and considered at some date after the return of the Judge of the above entitled Court to Idaho, and that the attorneys for plaintiff shall serve upon the attorney for the defendants written notice of the time and place of the hearing at least ten days before the same is taken up for consideration and settlement, and that respondent be not required to take any steps or action

until the expiration of the time provided by law and the rules, after the service of such notice.

Dated this 9th day of January, A. D. 1917.

PETERS & POWELL,
Attorneys for Plaintiff,
Residing at Seattle, Wash.
GEO. W. TANNAHILL,
Attorney for Plaintiff,
Residing at Lewiston, Idaho.
FRED E. BUTLER,
Attorney for Defendants,
Residing at Lewiston, Idaho.

Endorsed: Filed Jan. 10, 1917.

W. D. McReynolds, Clerk.

By M. W. Griffith, Deputy.

(Title of Court and Cause.)

STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between the Plaintiff and Defendants, by their respective counsel, that the proposed statement of the evidence proposed by the plaintiff for certification on its appeal to the Circuit Court of Appeals for the Ninth Circuit, shall be amended in the following particulars:

I.

In the sixth line on page ten, the figures "1901" shall be changed to "191..."

II.

On line 13 on page 11, after the word "been" insert "rescinded as."

III.

In line 12 on page 23 change the figures "24th" to "28th."

IV.

After the words "cruisers" in line nine on page 98 insert the following: "Defendants then offered and there was received in evidence defendants' exhibit No. 23 which is a plat of Township 38 N., R. 7 East.

V.

In lieu of lines 19 and 20 on page 140 insert the following: Thereupon said plat was offered by the defendants and received in evidence and marked defendants' exhibit No. 37."

VI.

In line eight on page 164 change the word "plaintiffs" to "Defendants."

VII.

The stipulation beginning with line 31 on page 161 and ending with line 28 on page 162 shall be stricken out as it is a repetition of the same matter appearing on page 22 of the proposed statement.

VIII.

In line 25 on page 161 in lieu of the words, "Exhibits 2 and 21 respectively" insert "Defendant Exhibit 21."

IX.

That all the documents attached to the deposition of Charles Portfors, and which are referred to in the stipulation appearing on pages 22 and 23 of the proposed statement shall be marked by the clerk of the court so as to identify the same as being documents attached to said deposition, and may thereupon

be included as a part of the statement of evidence certified, as other exhibits in the case.

X.

That the said proposed statement when so amended as above specified may be certified by the Judge of the above entitled court who tried the cause, as a true, complete and properly prepared statement of all the testimony introduced upon the trial of this cause essential to the decision on the questions presented by the appeal of the plaintiff, unless further changes shall be proposed by the defendants before the same shall be presented by the plaintiff to the said judge for certification. It is understood that all the exhibits referred to in said proposed statement shall, by proper reference thereto by the certificate of the Judge certifying said statement, become incorporated into and made a part of such statement.

XI.

It is further agreed that the Judge of the above entitled court who tried this cause may enter an order directing that the following exhibits shall not be printed, but that the originals thereof shall be sent up to the Circuit Court of Appeals in lieu of the printed copies thereof, to-wit: Defendants' Exhibits numbered 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 20-a, 23, 24, 35, 36, 38 and 39.

XII.

It is further agreed that the Judge of the above entitled Court who tried this cause make and enter an order directing that only one of the warrants constituting Plaintiff's Exhibit 1, and only one of the

warrants constituting Plaintiff's Exhibit 2, shall be printed, and that the originals of both said exhibits shall be sent up to the Circuit Court of Appeals in lieu of the printed copies thereof.

Dated this 23rd day of February, A. D. 1917.

PETERS & POWELL,

Attorneys for Plaintiff.

FRED E. BUTLER,

Attorney for Defendants.

Endorsed: Filed Feb. 26, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

NOTICE.

To the Above Named Defendants and to Fred E. Butler and John R. Becker, Their Solicitors and Attorneys:

You, and each of you, are hereby notified that the Dexter Horton Trust and Savings Bank, plaintiff above named, has heretofore, on the 30th day of December, 1916, lodged in the office of the Clerk of the United States District Court at Moscow, Idaho, for your examination, a statement of the evidence in the above entitled cause, and of the facts occurring at the trial thereof, for certification on the appeal of the plaintiff from the final judgment rendered therein by said court on the 11th day of September, 1916, to the Circuit Court of Appeals for the Ninth Circuit.

You are also further notified that the plaintiff will at 10 o'clock A. M. on the 7th day of March, 1917,

at the court room of the United States District Court at Boise, Idaho, ask the Honorable Frank Dietrich, Judge of said Court, before whom said cause was tried, to approve said statement.

PETERS & POWELL,

Attorneys for Plaintiff.

Service and copy acknowledged Feb'y 22, 1917.

FRED E. BUTLER,

For Defendants.

Endorsed: Filed Feb'y 26, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

STATEMENT OF FACTS OCCURRING AT THE TRIAL OF THE ABOVE ENTITLED CAUSE PROPOSED BY APPELLANT DEXTER HORTON TRUST AND SAVINGS BANK, A CORPORATION OF THE STATE OF WASHINGTON, FOR CERTIFICATION ON APPEAL TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BE IT REMEMBERED: That on the eighth day of May, 1916, the above entitled cause came regularly on for trial in the above entitled court before the Honorable Frank S. Dietrich, Judge of said court, sitting in equity, the respective parties being represented as follows:

Dexter Horton Trust and Savings Bank, plaintiff, being represented by George W. Tannahill and Peters & Powell, and H. B. Beckett of counsel; and

Defendants, County of Clearwater of the State of

Idaho and Oran D. Crockett as treasurer of said county by Fred E. Butler and John R. Becker, its attorneys.

Thereupon it was stated to the court by counsel for the plaintiff that the plaintiff had been in doubt as to whether the affirmative matter pleaded in the answer and the demand in the answer of the defendants for affirmative relief constituted a counterclaim which called for reply under the rule, but that to resolve any doubt on that point plaintiff had filed a reply to the answer, treating the affirmative matter as a counterclaim.

It was thereupon stipulated by the parties in open court that the answer of the defendants might be amended in the following particulars.

1. To allege that no certified list of the accounts which were allowed in favor of M. G. Nease was filed by the board of county commissioners of the defendant county with the treasurer of that county.

2. To allege that none of the warrants on which the plaintiff relies in this cause shows when the liability for which the warrant was drawn accrued.

It was further stipulated between the parties in open court that the above amendments to the answer might be considered as denied by the reply and that the reply of the plaintiff might be amended so as to deny the allegations of paragraph twenty-five of the answer and specifically deny that any of the indebtedness therein referred to and for which the purported warrant or warrants relied upon by the plaintiff in this action were drawn was an indebtedness

other than an ordinary and necessary expense incurred under the general laws of the State of Idaho.

It was further stipulated between the parties that all the allegations of the affirmative matter of the answer that are not denied in the reply as amended should be considered as admitted by the plaintiff and that the allegations in paragraph twenty-six on page twenty-four of the affirmative matter of the defendant's answer was admitted by the plaintiff and that no further proof of said admitted allegations should be required of the defendants.

The court thereupon directed that the above amendments should be made either by interlineation upon the face of the respective pleadings or by typewritten amendments filed with the clerk of the court.

Thereupon the following testimony was introduced on behalf of the plaintiff.

RALPH H. MacMICHAEL, as a witness on behalf on the plaintiff, testified as follows:

I am a resident of the city of Seattle in the State of Washington and for about two years last past have been and am now the assistant secretary of the plaintiff Dexter Horton Trust and Savings Bank, which during all of the said time was and is now a corporation organized under the laws of the State of Washington, engaged in the banking business at the city of Seattle in said State; I am also bond manager of the Dexter Horton National Bank of Seattle, Washington. Plaintiff, Dexter Horton Trust and Savings Bank, through me as its representa-

tive, purchased, upon the seventh day of July, 1915, certain warrants of Clearwater County, Idaho. The face value of said warrants exclusive of interest was \$44,072.69. Plaintiff purchased said warrants from M. G. Nease and paid to him therefor, on the seventh day of July, 1915, the sum of \$45,594.34, and the said warrants were thereupon delivered to the plaintiff. I have all said warrants in my possession in court. The warrants are in two classes as to dates. One class bears date November 7, 1914, and consists of warrants numbered 7308 to 7360, both numbers inclusive, of the aggregate amount, face value, of \$10,420.83. I have made copies of all of the warrants dated November 7, 1914, and I have compared all copies with the respective originals, which copies I produce.

Thereupon Exhibit Number One was introduced in evidence by the plaintiff and received, which is copies of said warrants number 7306 to 7360, both numbers inclusive, and it was stipulated in open court by counsel for respective parties that said copies should be received in evidence to be given the same effect as evidence as if they were the original documents. The witness then continued as follows:

The other class of said warrants so purchased by the plaintiff bore date December 8, 1914, which is warrants numbered 7543 to 7713, inclusive, aggregating in amount, face value, \$33,-651.86. I have made copies of each of said warrants and carefully compared all the same with the originals.

Thereupon the plaintiff's Exhibit Number Two was introduced by the plaintiff and received in evidence, being copies of said warrants numbered 7543 to 7713, inclusive, respectively, and it was stipulated by the parties that the same should be received in evidence without objection and with the same effect as evidence as the originals.

It was thereupon admitted by the defendants in open court that the signatures to all the warrants, copies of which are shown by Plaintiff's Exhibit One and Plaintiff's Exhibit Two, are the genuine signatures of the officers of the defendant county as they purport to be and that each of the warrants was presented to the treasurer of the county and stamped "Not Paid for Want of Funds," and thereafter registered by the treasurer of the county, as appears on the back of each warrant. Continuing the witness MacMichael stated:

After the plaintiff had received the warrants I found that the date of the registration stamp had been omitted upon two of the warrants, numbered 7633 and 7638, respectively. The plaintiff returned the same to the treasurer of Clearwater County at Orofino, Idaho, with the request that the treasurer supply the omitted date, which was done and the two warrants were returned to the plaintiff.

At the time plaintiff purchased the warrants it had no notice of any claim on the part of defendant county that they were not just obligations of the county. Plaintiff first learned that

the defendant county had any claim of objection against these obligations in September or October, 1915. No person or corporation except the plaintiff has ever at any time had any interest in any such warrants since the purchase thereof by the plaintiff.

On cross examination the witness MacMichael stated:

I first learned that Clearwater county objected to the payment of the warrants from Mr. Howard of the Ladd and Tilton Bank of Portland, Oregon. I received this information by letter from Mr. Howard but do not have the letter with me. The amount of \$44,072.69, which I have stated was the face value of the warrants, did not include the accrued interest, but that amount paid by the plaintiff, to-wit, \$45,594.34, took account of the accrued interest, being a discount of the face value of the warrants plus accrued interest.

On re-direct examination the witness MacMichael stated:

The amount of the discount was about one-half of one per cent.

Thereupon the plaintiff introduced and there was received in evidence Plaintiff's Exhibit Number Three, which is a certified copy of the record of the proceedings of the county commissioners of the defendant county of April 15, 1914, showing the action and proceedings of said board taken on said date in the cancellation of a certain contract bearing date

the 24th of February, 1914, theretofore entered into between Clearwater County and M. G. Nease and further showing the action and proceedings of said board in the consideration of the authorization and the entering into of a contract between Clearwater county and M. G. Nease for the cruising by the latter of timber lands in Clearwater county and showing further the filing of a bond by the said Nease with the American Surety Company, as surety, conditioned for the faithful performance by him of such contract.

Plaintiff then introduced and there was admitted in evidence Plaintiff's Exhibit Number Four, which was a certified copy of the records of the board of county commissioners of Clearwater county allowing, on the 15th day of October, 1914, the claim of M. G. Nease in the sum of Ten Thousand Six Hundred Fifty-six and 46/100 Dollars for work performed by M. G. Nease under the above mentioned contract dated April 15, 1914.

Plaintiff then introduced and there was received in evidence Plaintiff's Exhibit Number Five, which is a certified copy of the records of the board of county commissioners of the defendant county allowing, on November 7, 1914, the claim of M. G. Nease in the sum of Ten Thousand Four Hundred Twenty and 83/100 Dollars for work performed by M. G. Nease under the above mentioned contract.

Plaintiff then introduced and there was received in evidence Plaintiff's Exhibit Number Six, which is a certified copy of the records of the board of county

commissioners of Clearwater county allowing, on the 15th day of October, 1914, the claim of M. G. Nease in the sum of Eight Thousand Two Hundred Seventy and 53/100 Dollars for work performed by M. G. Nease under the above mentioned contract.

The plaintiff thereupon introduced and there was received in evidence Plaintiff's Exhibit Number Seven, which is a certified copy of the record of the board of county commissioners of Clearwater county allowing the claim of M. G. Nease, in the sum of Twenty-six Thousand Three Hundred Fourteen and 90/100 Dollars for work performed by M. G. Nease under the above mentioned contract.

Each of the claims shown in Exhibits Four, Five and Six, was originally allowed before the completion of the contract as a partial payment as the work progressed and under the terms of the contract eighty per cent only of the claims were then payable. On each of said claims, Exhibit Four, Five and Six, appears the record of the subsequent allowances, on the eighth day of December, 1914, of the balance of the twenty per cent on each of said claims. Thereupon it was stipulated in open court by the parties that the statement of the proceedings of the board of county commissioners of Clearwater county at the several meetings at which the above claims shown by Plaintiff's Exhibits Four, Five, Six and Seven were allowed, was published showing the amounts of these claims as required by law.

M. G. NEASE, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

I was during all the year 1914 a resident and citizen of the State of Oregon and have at all times since been and am now a resident and citizen of the State of Oregon and was not during any of said time a resident or citizen of the State of Idaho. My genuine signature appears on the back of each of the warrants of Clearwater county about which the witness MacMichael testified.

OREN D. CROCKETT, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

I am a resident and citizen of the State of Idaho and have been such resident and citizen of the State of Idaho for nineteen years last past and I have not been a resident or citizen either of the State of Oregon or the State of Washington during any part of said nineteen years last past.

And thereupon the plaintiff introduced and there was received in evidence Plaintiff's Exhibit Number Eight, which is a certified copy of the minutes of proceedings of the board of county commissioners of Clearwater county of October 14, 1914, and December 7, 1914, and December 8, 1914, showing the action of said board in allowing the claims of M. G. Nease. Thereupon the plaintiff rested its case.

OREN D. CROCKETT, being recalled as a witness on behalf of the defendants, testified as follows:

I am the treasurer of Clearwater county and one of the defendants.

He produced in court the book then in use by the board of county commissioners of Clearwater County and which had been used by them during the year 1914 and which the commissioners furnished to the treasurer of the county during that period showing the list of claims allowed by the board of county commissioners. Witness stated that:

The book contains a list of the claims allowed and for which the warrants in controversy were issued to M. G. Nease but such list is not certified.

On cross examination the witness testified as follows:

The claim for which the following warrants were issued are not listed, warrants number 7331 to 7339, inclusive, and warrants numbers 7343, 7596, 7597, 7598, 7599 and 7656. The book shows uncertified lists of other claims appearing in the book and allowed by the county commissioners during the years 1913, 1914 and 1915 and for which warrants were issued as follows:

On page 74 there is a list of claims allowed in the year 1913. On page 150 a list of claims allowed on the 23rd day of June, 1914. On page 151, and the several pages following, the list of claims allowed at the July term, of 1914; the list of claims allowed in January, 1915. On page 213 the list of claims allowed on the 14th day of April, 1915; also the list of claims allowed at the meetings of February and March, 1915.

He read to the court the head-line printed at the top of each right-hand page of the book, as follows:

“Certified list of claims allowed.

“Clearwater county, Idaho.

“Commissioners Court Term 191...”

The county commissioners list in this book the claims allowed by the commissioners' court and file it in the treasurer's office. The entries in the book are made by the clerk of the board. I took office as treasurer on January 11, 1915, and do not know anything about entries in the book made prior to that time. I know that the entries made in the book during my term of office were made by the clerk of the board because I am familiar with his hand-writing.

Thereupon the depositions of Frank Shreve and Charles Portfors, taken at Orofino, Idaho, on the sixth day of May, 1916, were read. At the taking of the depositions it was stipulated by the parties that any objections to the materiality and relevancy or competency of the deposition of any of the witnesses could be first urged at the trial of the cause without being taken or noted at the taking of the deposition. The witness FRANK SCHREVE, by his deposition, testified as follows:

I am a resident of Orofino, Idaho, and have been since the organization of Clearwater county deputy auditor thereof and deputy clerk of the board of county commissioners and have attended to all its records. I was present at a meeting of the board of county commissioners,

held on or about February 24, 1914, at which the board considered the matter of letting the first contract with M. G. Nease for cruising timber lands.

The following question was propounded to him by counsel for the defendants:

“Please state whether or not any officials were present at that time and, if so, who?”

Thereupon plaintiff objected to any testimony being received with reference to the commissioners' meeting of February 24, 1914, on the ground that the contract between Clearwater county and M. G. Nease, which was authorized at that meeting, had been rescinded as shown by the records of the Commissioners' Court already in evidence and that no rights were being claimed in this suit under that contract. Thereupon the defendants by their counsel asked leave of court to amend their answer so as to charge that there had been fraud and collusion in the making of the contract between Clearwater county and M. G. Nease, dated April 15, 1914. The court thereupon, over the objection of the plaintiff, granted leave to the defendants to amend their answer so as to include therein the general statement of such fraud and collusion, but announced that the testimony and evidence in support of that general allegation would not be permitted to go beyond the specific facts or suggestions already in the answer. The answer of the deponent was thereupon read and was as follows:

All the members of the board were present to the best of my recollection and also P. H. Blake,

the county assessor, and Mr. Portfors and Mr. Sampson Snyder, and several other men, as well as Mr. Nease.

Continuing the deponent stated:

The board also talked about letting a bid for cruising the timber and I heard Mr. John Swanson and Mr. Portfors ask for specifications upon which to bid. Mr. Swanson stated to the board that he could estimate the timber but did not know that he could make the maps without knowing what was wanted, and Mr. Portfors conversation was about the same. Mr. Zalenka, one of the members of the board, stated that they could make up their own forms of maps and showed them a copy of Mr. Nease's. Mr. Nease claimed that he had a copyright on his forms of plats and maps. There was a great deal more said but I do not recall what it was. Neither Mr. Swanson nor Mr. Portfors submitted a bid. Mr. Portfors desired to know how much time the board would give him to submit a bid and thereupon Mr. Blake, the assessor, made a speech to the board in substance that he had fooled along with the matter until his patience had been tried and that if the board did not take some action he would proceed to have the timber lands cruised and estimated. The matter had not been before the board for consideration previous to that time. There were two other bids filed with the board but they were not satisfactory. I do not know whether the board compared the bids or not but

they had the bids before them and said that Nease's was the best bid and most satisfactory, but stated no reasons therefor. Prior to this meeting several people had asked me if the board was going to have the timber cruised and Mr. Becker asked me on the day of the meeting whether or not the letting of a contract for cruising the timber was to come up for consideration on that day and I told him nothing more than that the special meeting had been called for that purpose and that any one else knew as much about it as I did. I had no knowledge as to what the board expected to do except what I could infer from the special call of the meeting. With reference to the qualification of Mr. Portfors and Mr. Swanson, the board said that they did not want to let a contract for the cruising to any one who was working for the timber company, and they said that Mr. Portfors was disqualified on that account but I do not remember that they said anything about Mr. Swanson. They asked Mr. Portfors if he had been working for the timber companies and he said to Mr. Zalenka: "How could a man learn cruising without working for a timber company." The board had before them a scrap book with clippings from newspapers, evidently sent them by someone who was not friendly to Mr. Nease, as the contents of the clippings was derogatory to him, but I do not remember what it was. This scrap book was examined by the members of the board before the

letting of the contract. The contract submitted by Mr. Nease at this meeting was not taken up and discussed by the board at any prior meeting. I wrote it into the minutes on that day. No formal vote was taken on it. Refreshing my recollection by reference to the commissioners' minute book and the minutes therein of February 24, 1914, I am able to say that the minutes must have been read to the board the evening of that day. The first contract with Mr. Nease of date of February 24, 1914, was not made a matter of record by the board.

I acted as clerk of the board on April 14th, and 15th, 1914. On April 15 I was writing up the minutes and copied into the minutes the contract between the county and M. G. Nease bearing that date. It was read to me by Mr. Nease's lawyer Mr. Beckett. The board met on the 14th day of April, 1914, and also on the following day. All the business that was transacted that day was with reference to the Nease contract. This contract of April 15, 1914, was not considered by the board prior to that date as far as I know. The county attorney had nothing to do with assisting me in preparing the minutes although I asked him to do so. I know of no request that had been made by the assessor for cruising the timber lands prior to the meeting of the board of county commissioners on February 24, 1914. If any such request had been made and filed with the board or made orally while

the board was in session I would have known it.

Thereupon the court announced to counsel for the respective parties that both plaintiff and defendants might be deemed to have exceptions to all adverse rulings made during the trial and that it would be unnecessary to note exceptions.

Continuing, deponent stated:

No one appeared before the board of commissioners at its meeting of April 15, 1914, to submit bids for the work of cruising the timber. There was no ^{notice} ~~notes~~ of the proceedings of the board of that date except such as appear of record in his office. No plans or specifications for the cruising were prepared by the county commissioners or other officers to his knowledge which did not appear of record in the proceedings of the board.

On cross examination the witness SCHREVE in his deposition further testified as follows:

When I said upon his direct examination that the contract between Clearwater county and M. G. Nease, dated February 24, 1914, was never made a contract of record I meant that the contract itself was not copied into the record. The record of the minutes of the meeting of that day showed that the contract was entered into. The minutes of the meeting of the board of county commissioners of April 15, 1914, as they appear of record are correct. It was a regular session and not a called meeting. There was a publication of the statement of the pro-

ceedings of that meeting after the meeting adjourned in the Orofino Tribune, a newspaper published in Orofino at that time. The contract between the county and M. G. Nease dated the 15th day of April, 1915, was signed at the board meeting on that date. Mr. Beckett assisted me in making up the minutes of the board by reading this contract to me and I copied it into the record.

Thereupon the deposition of CHARLES PORTFORS was read and he testified in his deposition as follows:

I am 44 years of age and live at Weippe. I have been a timber cruiser off and on during the last twelve years and am experienced in cruising timber. Have been in Clearwater county and have worked for the Clearwater Timber Company and George Rubedew and also for the forestry service. I have done some cruising for individuals. My method of cruising has been to double run, going through each forty-acre tract twice; that is, to go through each forty twice.

Thereupon the following question propounded to the witness by counsel for defendants was read:

“Have you usually made any exceptions? If so, why and under what circumstances?”

Thereupon the plaintiff by its counsel objected to this question and to the witness answering the same upon the following grounds: (1) That the purpose of the testimony sought to be elicited from the witness by this question and also by subsequent ques-

tions which were propounded to the witness at the time of the taking of the deposition was to show that the work done by the cruisers who were in the employ of M. G. Nease was not properly done and to examine into the question as to whether Nease had properly performed his contract in doing the work which he was required to do thereunder, and to show that the work done by Nease in the performance of his contract had not been done in the opinion of the witness in a correct manner.

2. That the board of county commissioners of Clearwater county was under the law charged with the duty and power of accepting or rejecting the work done under all contracts let by the board within the scope of its powers. That the board of county commissioners having accepted the work done by Nease after performance of his contract, the county is bound by such acceptance which closes all inquiry into the question of whether the contract had been properly performed or not, in the absence of some showing that the commissioners had been induced to make such acceptance by some fraud or deceit practiced upon them in the matter of the acceptance.

Thereupon the court ruled that the defendants would be permitted to show, if they could, that the work of the contractor Nease was so improperly done that no honest man would accept it for the reason that such facts if proven might reflect light upon the motives of the parties in entering into the contract.

Thereupon the deponent further stated as follows:

I have run through forty-acre tracts occasionally four times when I thought it necessary and have occasionally made single runs. I have made single runs in burned tracts when there was not timber enough to justify the company in buying it, but not in green timber, and usually cover in my cruise from four to eight forty-acre tracts a day. Four forty-acre tracts a day is a good average for a two weeks' voyage. I have to move camp after cruising from four to six ^{sections} weeks depending upon the lay of the land which usually occasions a loss of a day's time, which loss I consider in making up my day's average. The character of the lands in Clearwater county is rough, brushy and cut up with deep ravines as a rule. There is some fairly level land around Weippe and in townships 37, range five, thirty-eight, range three, and thirty-seven, range three, and most of the townships have some little level land. I have done cruising in practically every township in Clearwater county except at the head of Clearwater river. The best season for cruising is in the spring when the snow is settled. The brush is a difficulty that has to be contended with in the summer and also the roughness of the ground. There are various kinds of timber in Clearwater county: red fir, white fir and other kinds, all growth and new growth, found growing together in many places. The more different classes of timber there are the longer it takes to cruise it. I have cruised timber in township 39, range 6, and township thirty-nine, range five. In those townships it would be pretty hard work to average four forty-acre tracts

a day in cruising. I cover as much ground in cruising as any man I have worked with. I can't cruise sixteen forty-acre tracts in a day under any conditions and in my judgment that amount of land could not be cruised in one day. A cruise arrived at by passing once through each forty-acre tract would not have any value for assessment purposes because a man could not see the timber and get an average on a single run. The amount of timber that a cruiser would see in passing through the lands once depends upon the lay of the ground. I would take in making a run a strip four rods wide. I count the trees inside the strip, but it is necessary to see that the timber outside the strip is the same. If the trees outside the strip have been burned in patches it would be necessary to go and see to what extent that runs and use my judgment to see how much of the timber is off the strip; otherwise one could not arrive accurately at the extent of the burns and the general topography. In the spring of 1914 I saw Mr. Clark and Mr. Wherry, Mr. Young, Mr. McCombs and Mr. Bennison, who were some of Nease's cruisers, in the woods. They were cruising in townships 39, range three, 38, range three, 38, range five, and 39, range five, and 39, range six, and particularly observed the work of Mr. Clark. He went through the forty-acre tracts the same as I do. As far as I could see there was no difference in the way he checked up these forties from my method except that he never took any measurements of the trees. I always take measurements. The frequency with which I take them de-

pend upon the quality of the timber. I make these measurements with a tape line. I did not see Mr. Clark make any measurements. I think it is necessary to do so. I followed Mr. Clark all day. He covered eight forties in a day. He was with me three or four days. He was cruising in township 38, range three, and the land was favorable. I was present at the meeting of the board of county commissioners on February 24, 1914, when it considered the matter of letting the contract for cruising timber land in Clearwater county. The meeting was held in the county auditor's office. There were present the three county commissioners, Mr. Schreve, Mr. Pat. Blake, Mr. John Swanson, and I think Mr. Snyder was there. Mr. Nease was there. On that day but prior to the meeting I talked to all the commissioners relative to the subject of cruising the timber lands. I asked Mr. Zalenka if a contract for the cruise was to be let that day and he said that it was up to be considered but he did not know whether it was to be let or not. I told him that when it was to be let I wanted to know because I was planning putting in a bid. He told me that he was planning having local men do the checking. I talked also with Mr. Harrison and Mr. Torgerson. I consulted with Mr. Becker with reference to his making out a bid for me and he advised me to find out from the commissioners what kind of a cruise they wanted to make. I then talked to Mr. Zalenka and he said he did not have any specifications but to put in any kind of a bid I wanted to. This was prior to the meeting. At the meeting I told

the board I wanted to put in a bid and Mr. Zalenka said he could not consider a bid from me because I worked for timber companies, and I asked him if there was any other way to learn to be a timber cruiser than to work for a timber company. I was not then in the employ of a timber company nor do I think Mr. Swanson was. Mr. Harrison asked me if I had a bid and I said no that I had tried all day to find out what kind of a cruise they wanted. Mr. Harrison asked me how long it would take me to make out a bid and I said it would not take me very long. Mr. Blake, the county assessor, then took the floor and said that the thing had fooled along long enough and that the contract had got to be let then or he would act. At that Mr. Zalenka asked for a vote and all the commissioners voted Yes for Mr. Nease. Mr. Harrison had told me that I could put in a bid if I wished. There was no other person present interested in bidding except myself and Mr. Nease so far as I know. I was considering bidding for myself and not for someone else. I think Mr. Harlin was up there, but I am not positive. I received no specifications from the board. I had no notice the contract was going to be let or considered that day.

On cross examination the deponent testified as follows:

What cruising I have done has been done by me under employment by the day. I have had no experience in cruising by contract where the cruising was to be done by men under by employ. I have only had charge of one or two crews. I have never taken

a contract for cruising. When I stated that I saw Mr. Clark, one of Mr. Nease's cruisers, I meant that I went right behind him in the woods for three or four days. I was also with Mr. Wherry for two or three days and also with Mr. Bennison for two days. I saw Clark four days, Wherry three days and Bennison three days. The Clearwater Timber Company had me do that. I was working for them. They paid me Five Dollars a day for doing it. The Clearwater Timber Company was opposed to this cruise. At the time I talked about putting in a bid to the county commissioners for cruising it was probably three or four months since I had been in the employ of any of the timber companies. I was then laying off during the bad weather and expected to go to work for them again as soon as the weather was better and have been drawing pay from them off and on ever since and for eight or nine years prior to that.

On re-direct examination the deponent testified as follows:

When I was working on the fire patrol I was working for the Clearwater Timber Association which is composed of the State of Idaho and the Clearwater Timber Company and other holdings and I am present fire warden in the association and have been since last June and it is my duty as fire warden to keep down fires over all of the Clearwater country excepting the reserve. I cover practically all of Clearwater county. It was in the month of April that I followed Mr. Bennison and Mr. Wherry in their cruising. I was in the employ of the Clearwater Timber Company in following up these men for perhaps two

weeks. They were double running most of the work although they single run some of it.

On re-cross-examination the deponent testified as follows:

In February, 1914, I had a house and two lots in Clearwater county on the assessment roll but I do not remember whether I was then paying taxes on my ranch or not. I bought the ranch about that time. If I did not own the ranch at that time the amount of property assessed to me in Clearwater county was less than Five Hundred Dollars. I paid \$2800.00 for the ranch. I had Five or Six Thousand Dollars in the bank but had no other personal property except household goods. I am a married man and have no property outside of Clearwater county. Mr. Zalenka told me that the commissioners preferred to employ someone to do the cruising for the county that had not recently been employed by anyone owning timber in the county. He also told me that one of the reasons why the board favored Mr. Nease was because he had no connection with the timber companies and never been employed or been connected with any of the timber companies owning land in Clearwater county.

On re-direct examination the deponent testified as follows:

Mr. Zalenka told me that Mr. Nease agreed to work free of the timber company.

On re-cross examination deponent testified as follows:

That the amount of cash which I had on hand in February, 1914, depends upon whether I had at that time bought my ranch. If I had bought the land the

amount which I have stated I had in bank would be reduced by the amount of that payment. I paid Sixteen Hundred Dollars cash, taking the land subject to a mortgage of Twelve Hundred Dollars.

The witness was excused.

Thereupon it was stipulated by the parties in open court that Exhibit Number One attached to the defendants' answer is a true copy of the notice calling a special meeting of the board of county commissioners of defendant county for the 24th day of February, 1914, and that Exhibit Number Six attached to the defendants' answer is a true copy of the minutes of the said meeting and that there are no more minutes appearing upon the record book of the board of county commissioners with reference to the execution of the contract of February 24. It was further stipulated that attached to the deposition of Charles Portfors is a true copy of the minutes of the meeting of the board of county commissioners of defendant county held on the 21st day of March, 1914, also a true copy of the minutes of the meeting of said board held on the 28th day of March, 1914, and that the copy of the minutes of the proceedings of said board of the 14th and 15th days of April, 1914, and the sixth day of June, 1914, certified by the county auditor on the fifth day of May, 1916, constitute a true copy of the entire record of the proceedings of said board with reference to the authorization and execution of the contract by the defendant county and M. G. Nease bearing date the 15th day of April, 1914.

It was further stipulated between the parties that a statement of the proceedings of the board of county

commissioners of the 15th day of October, 1914, the seventh day of November, 1914, and the eighth day of December, 1914, were duly published as required by law.

Exhibit attached to the deposition of Charles Portfors.

Orofino, Idaho, Mar. 28th, 1914.

Board met in special session pursuant to order of March 21st, 1914. Present: Frank Zelenka, Chairman and Commissioner 2nd Dist.; Frank Harrison, Commissioner First Dist.; Joseph Kauffman, Clerk, by F. N. Shreve, Deputy.

Following proceedings were had, to-wit:

Minutes of March 20th and 21st read and approved.

This being the time set by the board in accordance with notices of publication dated March 21, 1914, for the designation of timber lands to be cruised by M. G. Nease under the contract made Feby. 24th, 1914, by and between the Board of County Commissioners of Clearwater County, Idaho, party of the first part, and M. G. Nease, party of the second part, the Board, at this time, designated the following lands:

Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17 and 18 in Township 38 North, Range 3 East.

Sections 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35 in Township 39 North of Range 3 East B. M.

Board adjourned sine die.

FRANK ZELENKA,
Chairman.

Attest:

JOSEPH KAUFFMAN, Clerk of Board.

F. N. Shreve, Deputy.

Exhibit attached to the deposition of Charles Portfors.

Orofino, Idaho, Mar. 21, 1914.

Board met in special session pursuant to adjournment of Mar. 20th, 1914.

All members of the Board present and Joseph Kauffman, Clerk, by F. N. Shreve, Deputy.

It is ordered by the Board of County Commissioners of Clearwater County, Idaho, that a special meeting and session of said Board be called for March 28th, 1914, for the purpose of designating the timber lands to be cruised by M. G. Nease in accordance with the contract made by said M. G. Nease and the Board of County Commissioners, Clearwater County, Idaho, on Feby. 24, 1914.

The Clerk of the Board is instructed to give the usual public notice by posting three notices in conspicuous places, one of which shall be at the court house door.

FRANK HARRISON,
Commissioner First District.

FRANK ZELENKA,
Commissioner Second District.

ELMER O. TORGERSON,
Commissioner Third District.

Board adjourned sine die.

FRANK ZELENKA,

Attest:

Chairman.

JOSEPH KAUFFMAN, Clerk of Board.

By F. N. Shreve, Deputy.

Thereupon the court adjourned until ten o'clock, A. M., on May 9, 1916.

Upon the reconvening of court on that date M. G. Nease was called as a witness on behalf of defendants and testified as follows:

My report to Clearwater county of cruises made by me was based on the field reports made by the individual cruisers in the field. I identify the document shown me as the report returned to me by Archie Young on section four, township 39 north, range three, east. I do not know who made the notation in the margin of this report as follows: "These two forties were actually cruised. Balance done in camp." It is not my hand-writing nor is it that of Mr. Fulton who wrote up the office report, nor is it Archie Young's. This is not the first time that notation has been called to my attention.

Thereupon the defendants, by their counsel, offered in evidence the above mentioned report of Archie Young, dated April 25 and 26th, 1914, and asked leave to substitute a copy for the original. Plaintiff, by its counsel, objected to said report being received in evidence on the ground that the court could not in this case examine into the correctness of the work done by Nease and that all questions in regard to the sufficiency of the performance of the work had been concluded by the acceptance of the work by the defendant county and that the evidence offered did not in any manner tend to substantiate any allega-

tions of the answer of collusion or fraud Plaintiff, by its counsel, requested that it be understood that this objection be taken and considered as made to all evidence that should be offered for a like purpose. Thereupon the court made the following ruling:

THE COURT: Of course, gentlemen, it ought to be understood at this time that if you are going into this matter at all you will have to take it up in such a way as to make it a circumstance tending to show a fraudulent agreement or understanding between this witness and the board of county commissioners. We can't be drawn into an inquiry at this time as to the correctness of the work itself. In other words, we are not going to sit here as a board of county commissioners would sit for the purpose of determining whether or not the warrants should have been drawn or the bills allowed, unless you go further and show that there was a fraudulent understanding or collusive arrangement between this witness and the board of commissioners, pursuant to which the board went through the form of allowing his claims without examining into them, and they both understood that the work would not be properly done.

Counsel for the defendants then stated to the court that they would later connect up the evidence offered and that it was submitted for the purpose of showing fraud and collusion because if that kind of work was passed by the commissioners that would tend to show such fraud and collusion. And plaintiff, by its counsel, then made further objection to said report being received in evidence that there was no proof before

the court as to who had made the notation in the margin thereof.

Thereupon the court made the following ruling:

THE COURT: The objection is overruled, provided it will be connected up in that way, as suggested by counsel.

The document was received in evidence and marked Defendant's Exhibit 3.

Continuing, the witness testified:

In instructing my cruisers as to the lands they were to examine, I gave them township plats upon which the lands were marked which they were to cruise. I have in my possession all of the original field books that were turned into me by the men. Some of the men did not use field books but used celluloid pads instead. Most of the men who used field books kept them and did not turn them in to me.

Thereupon counsel for the defendants propounded the following question to the witness:

"Have you any books or have you prepared any statement showing the names of all the men who worked for you and their actual time of employment and the amount paid and other figures and accounts tending to show what this work cost you?"

Thereupon plaintiff by its counsel objected to the question and to the witness answering the same on the ground that the amount which it cost the witness to perform the work was immaterial to any of the issues in the case and that the amount paid by the witness to his men was likewise immaterial to any of the issues of the case.

Thereupon the court overruled the objections of the plaintiff and the witness answered as follows:

Partially so, yes.

Proceeding, the witness testified as follows:

The statement is incomplete in that it does not show the amount of cash I paid out at various times from my own pocket. I have not in my possession any of the field books or estimates of James A. Morrow or estimates of any other persons except my own men on any of the lands in Clearwater county. At one time I had some figures which Mr. Morrow gave me and said were estimates by him upon some of the lands, but I returned these figures to Mr. Morrow by mail. I do not know how much the cruise cost me.

The witness was excused.

EDWARD RANDOLPH, being produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

I am a timber cruiser and have cruised off and on for about 27 years. I have worked in Michigan, Minnesota and on the Pacific Coast. I worked for Mr. Nease at cruising both in the State of Idaho and in the counties of Clackamas and Clatsop counties in the State of Oregon. I entered Mr. Nease's employ in Clearwater county, Idaho, about May 17, 1914, and worked for him until the 14th of June of that year, and during that time I cruised about 3800 acres. During that time I spent about 20 or 21 days in actual working in the field. I came back to work for Mr. Nease in Clearwater county in August

of that year. I think it was the fifth of August; and continued until sometime in October, putting in 70 days of actual work in the field including moving. One loses a day now and again in moving. I put in about 60 days during the latter period in actual cruising and cruised approximately 27,000 acres. My instructions from Mr. Nease were to get the timber and to use my own judgment as to how I should run it. His instructions in the spring were to double run everything, and I did so except a half section. I used a different method in the fall. I run the forty lines and took a strip on each side of each forty. In the fall I sometimes cruised more than a section a day. I was in the farming part of the country and it was a lot better country than where I was in the spring. I cruised some farm lands taking the topography of it and I cruised the town of Weippe. I had instructions from Mr. Nease in writing and plats of the land showing by colors the government, state and patented lands. Mr. Nease told me to cruise all the patented lands. He gave me a plat of township 34, north, range five east, and later township 34, north, range four, east. At the time he gave me the plat for township 36 north, range four, east, he told me not to estimate any state lands but that there were four government forties on the plat which he told me to estimate. That was all the government land in my territory which I was to cruise. I asked Mr. Nease what he wanted cruised up at Whites Meadows and he told me to go on out and get the timber and use my own judgment and to double run

it if it was necessary and where it was old timber I was to single run it. He did not tell me how much timber he expected me to cruise in a day. The reason I cruised more per day in the fall than in the spring was that in the spring I had a lot rougher country and the timber was much heavier. It was not nearly as good going and I could not go nearly so far in a day and back, and I did not double run it in the fall. In the fore part of August Mr. Nease told me to single run it. I do not know whether you would call the method I used in the fall a single run. I did not go through the center of a forty but I went along the sides of each forty. I cruised in that way before in Oregon, Michigan and Minnesota. I went through the center of some forties. I do not think one can get all the timber in that way in a rough country. That method of cruising is generally used in preliminary work. I have at times in cruising for J. D. Lacey and Company gone through the forties 16 times. When Mr. Nease told me to cruise the four government forties he gave me the impression that he wanted this done for his own use.

On cross examination the witness testified as follows:

I turned in reports to Mr. Nease on each section of lands that I cruised and these reports were correct to the best of my knowledge and judgment and they showed the topography of the country and the quantity and kinds of timber from what I have seen on the land and it was the best of my judgment throughout. You cannot call the method of cruising that I used

in the fall of 1914 either as a single run or double run. I did work up on the section line and back on the eighths and so on through the section. I would see both sides of each forty instead of going through the middle. When I was in doubt as to any forty I would go over into the forty. I would go over into the forty a tally or so. The impression Mr. Nease gave me was to do what I could by hard work and that I was to single run except where the timber was heavy and I thought it needed a double run, and that I was to make an honest and careful cruise to the best of my ability. Mr. Nease did not say that he wanted the four government forties cruised for his own benefit but I inferred that; but not from anything that he said. I had to go through the woods to get the topography and estimate of the timber on the timbered portions of the farms. I do not know how much I cruised per day on an average. When I started to work for Mr. Nease he gave me written instructions as to how I was to do my work and I followed them to the best of my ability. The copy of the instructions attached to the defendants' answer, being Exhibit 16 of the answer, is a copy of the instructions that I received. I did not follow out those instructions exactly. I took more acreage and more work. I did not detail. I single run a lot. I would have double run a little more of it if I had had more time but I did not have the time. I was told that a single run would be all right. I never knew of any other timber company except J. D. Lacey and Company in its cruising requiring going through a forty

sixteen times to cruise it. Every timber company has its own system more or less. I worked for Mr. Nease in cruising the timber in Latah county, Idaho, for that county.

On re-direct examination the witness Randolph testified as follows:

I did not show on my plats by a small circle the exact points at which I took the elevations. I just put a dot there. At the start I just put the elevation on the forty line of some of my plats. I generally showed four elevations on a forty acre tract. I did not always read the barometer at the point indicated on the plat. My instructions were to put the elevations at two points on each forty line. Aneroid barometer determinations were very seldom put down on the actual spot where it was taken because we generally put down the elevations at some point designated by even hundreds of feet and it is often 75 or 50 feet or half a tally from where one is standing in reading the barometer to such point. I often indicated on my plats the elevations at points where I did not read the barometer by judging from the point where I actually read the barometer by the slope of the country what the elevation was at the point where it is indicated. I can cruise accurately and carefully in the rough part of Clearwater county about 160 acres of standing timber. I can do more than that and comply with the instructions. One hundred sixty acres would be a fair day's work. In my cruising in Clearwater county I had time to measure up trees and there was not a day that I did not

measure a tree, sometimes I measured with a tape, sometimes with my hands. Nobody ever criticized me for not following instructions. Mr. McKay never checked or criticized my work. I think he knew how I was doing it.

On re-cross examination the witness Randolph testified as follows:

About April 4, 1914, I received a letter from Mr. Nease about taking my elevations.

The witness was then shown a letter addressed to him by M. G. Nease under date of April 4, 1914, and stated that he supposed that was the letter which he received but was not certain. The letter was then introduced in evidence and marked Exhibit Ten, for the Plaintiff. Continuing the witness stated:

In estimating 160 acres as a day's work for cruising I mean of heavy timbered land. Some of the land that I was cruising in Clearwater county was not so very heavy. I had a compass man with me all the time by the name of Johnny Cox who took the topography and made his own plats of topography which I checked. He carried the aneroid barometer and had charge of that part of the work and was competent to do it.

In answer to questions by the court the witness Randolph testified as follows:

In cruising there are two of us go together—compassman and myself. That was true both in the spring cruising and the fall cruising on this job. The compassman would make all the measurements of the land in order to keep me posted where I was on the

land. I did the estimating of the timber. I did this by taking strips through the land and estimating the individual trees as I went. In my fall cruising I ran along on the line between adjacent forties; that is to say, my runs through a section were eighty rods apart and I estimated the individual trees on a strip four rods wide on each run. When I got into big yellow fir timber and open country I would take a strip in my runs of 75 feet on each side. I would estimate individually every tree on the strip that I could see and estimate the condition. I would estimate the height of a tree with my eye. I would estimate the size of a tree by looking at it and would measure a tree occasionally to keep my eye in. I would note the number of trees and the number of feet in each tree and I would keep a record of the aggregate number of feet. In making a run I would keep the number of feet in my head adding it as it kept along until I came to the end of a forty when I would enter it on my tab which I had with me. From the number of feet of timber which I found in the strips which I run I would make an average estimate of the amount of timber on the entire forty after making allowances for openings and use my judgment as to the character of the timber on the whole tract.

In the conversation I had with Mr. Nease at Whites Meadows in the fall of 1914 I told him that I could not cover so much ground if I doubled run. We were talking about what was to be done. He said that a single run ought to be all right down south away

from the big timber. I was paid six dollars a day and expenses in the spring. I did not stay in Idaho during the summer. I went back to Portland after the spring cruises and came back in the fall. I had no definite understanding with Mr. Nease as to what pay I should receive for the fall cruise. I told him I would leave that to his own judgment when I came in. I expected him to pay me seven dollars a day. That is the going wages for a competent cruiser. A going wages for a compassman are from three to four dollars a day.

On further direct examination the witness Randolph testified as follows:

When I spoke of taking a strip of 25 paces and going through a section I meant 25 paces on each side of me. That is what I meant when I spoke of ten rods. At the time of the conversation with Mr. Nease at Whites Meadows I was about to go down in among jack pine and yellow pine which is not heavy old growth timber. There was some heavy timber in it but very little. This was around Weippe. It is pretty good country to get through and fairly level. In places it is densely timbered with young growth and in other places quite open.

On re-cross examination the witness Randolph testified as follows:

In cruising lands in which there were openings in the timber the compassman would pass the openings in the timber and determine the area of the opening. If there was an 80 acre tract of timber by itself I would double run it. The first cruising I did in

Clearwater county was in township 39 north, range six, which was heavily timbered and it would take me longer to cruise land of that character than it would take to cruise in the same manner lands at Weippe. I think I could do two more forties a day around Weippe and do it in the same way.

On further re-direct examination the witness Randolph testified as follows:

One section that I cruised in the spring had 29,000,000 feet. I consider that a very heavy stand. Sections one, two, three, four, five, seven, eight and ten in township 36 north, range four, I do not consider light timber but it is a different kind and more uniform and of younger growth. At the time I signed up the contract with Mr. Nease I told him that I could not work for six dollars a day and strictly adhere to that contract. He said that he would pay me six dollars a day and that he needed the contract signed and wanted to use it.

On re-cross examination the witness Randolph further testified as follows:

I told Mr. Nease that the reason why I could not work for six dollars a day and adhere to the contract was that I would not sign a contract for a man that would go out and check me and say I was wrong and then deduct from my wages without giving me a chance to go over the land again. I said I would not stand for that. That was my objection.

On further re-direct examination the witness Randolph testified as follows:

There was no other reason why I did not want to

sign the contract. I followed the written instructions in my contract with Mr. Nease to a certain extent and then I went by his verbal instructions. At any time he told me to do anything I did it.

The witness was excused.

ROY WHERRY, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

I am 30 years of age, a timber cruiser by occupation and I have followed that work for fourteen years. I worked for M. G. Nease as a timber cruiser in Clatsop county, Oregon, in 1913, and Clearwater county, Idaho, in 1914. I started to work in Clearwater county on the 19th day of April, 1914, and worked continuously for him for 66 days on that trip. I commenced work for him again in Clearwater county on the fifth day of August, 1914. I had no instructions from Mr. Nease as to the manner in which I should do my work only in a general way. I did have written instructions. The lands which I was to cruise were designated to me on a blue print. I think the lands which I was to cruise were designated in red on the plats although I do not recollect the colors. The state and government lands were designated on the plats. There was nothing said to me by Mr. Nease about my cruising any government or state lands except as to a tract of state land that was marked on my plat and I asked him whether he wanted that tract cruised as I had to go through it anyway and he said, yes. I cruised it. That was the north half of the southwest quarter of section eight,

township 38 north, range six east. In making up my report on that section I designated the north half of the southwest quarter as state land by writing in the margin and designating by an arrow point to the description of that forty and that has been erased. It was written in lead pencil. I am positive that this designation was there when I turned in the report. I had only one conversation with Mr. Nease with regard to the government unpatented lands and that was at Whites Meadows on the fourth of August, 1914. He asked me to cruise the east half of the southwest quarter of section 23, township 38 north, range six east, as soon as possible as he wished to place scrip on it if it was good land. In my report on this section I designated the east half of the southwest quarter as government land. I did not knowingly cruise any other government land. At the time I was talking to Mr. Nease about cruising section eight, township 38 north, range six east, he said whenever it was convenient to cruise an eighty acre or forty acre small tract of state land to cruise it and turn it in that they could get by with that much. My written instructions were to mark up the letter N at each section corner or quarter corner. About the 20th of August at Whites Meadows Mr. Nease asked me if I was marking the corners by writing my own name. I told him I was and he requested me not to do that. I made no reports of timber found on any land which I did not actually cruise. On the 14th day of October, 1914, at the Bollinger Hotel at Lewiston, Idaho, I had a conversation with

Mr. Nease at which Mr. Thomas Laughlin and Harry Leighton were present in regard to putting in the figures on a tract of land described as the south half of the north half of section 15, township 38 north, range six east. Mr. Nease asked me if I could put the figures on it and I told him, no. He then asked me if it would average with the work I had done and I told him I did not know, that it might. He said that it had since become patented land or taxable property since the time I had cruised there. Mr. Nease's foreman in charge of the work in the spring of 1914 was Mr. Murray. At a later time Mr. McKay was the checker. I double run the larger portion of the land I cruised for Mr. Nease in the spring of 1914. I should judge that about sixty per cent of it was double run. All the land that I cruised in the fall was single run. I prepared the plat on the back of the field report on section eight, township 38 north, range six east. The numbers 3700 and 3950 on the north line of the northeast quarter of the northeast quarter of that section and the numbers 4050 and 4050 on the south line of that tract represent the elevations, that is, guessed at. I took the elevations in the middle of the line between the points where the elevations are indicated and then made an allowance, guess, on each side and put the elevations in. In estimating elevations I sometimes lowered it below and sometimes raised it above the elevation of the point at which I stood and in level ground I put it in practically the same. My instructions were to put two elevations in, one on each

side of where I actually was in order to indicate a double run. In the spring cruising I averaged 279 acres a day. In the fall I averaged 387 acres per day. I single ran all the lands in the fall and in the spring I doubled about sixty per cent of what I cruised. I changed my method of cruising in the fall because I was trying to get acreage. My instructions from Mr. Nease were to get through as quickly as possible. He gave me these instructions at Whites Meadows on about the fourth of August and again about the 17th of August. I have in my possession all of the original field books or notes made by me while working for Mr. Nease. The figures 27,000, under the heading of Ties in the field report on section four and the figures 28,000 under the heading of Ties on the field report of section ten, and the figures 44,000 under the heading of Ties on field report of section 15, all in township 38 north, range three, east, are figures which I entered on the report. It was part of my instructions to find the number of ties on the land and I know of no reason why the number of ties shown on this report should not have been reported by Mr. Nease to the county if such is the case.

The figures on the field reports for sections four, five and six in township 39 north, range three, east, are my figures, except the following:

“1915. 915-C in the cedar poles column;

H1350 in the column for dimensions and lengths of poles; and 150 opposite the northwest of the northwest. I suppose those figures refer to the check made by the county checker.

The figures showing number of ties on section four, 42,500; on section five, 43,500; on section six, 29,500, are my figures and I found that number of ties on the sections respectively I have checked up the county records of the Nease cruise to ascertain whether or not the topography was properly entered on the county books and I have found considerable variance in section six, township 38 north, range six, east. My signature appears to the field report on section six, township 38 north, range six east. It differs from the report made upon this section by Mr. Nease to the county in this: Mr. Nease's report to the county shows the main divide running through the south half of this section. On my report there is no such divide shown except that it is broken. The divide slopes in two directions. There are several ridges shown on my report to Mr. Nease that are not shown on his report to the county. There is considerable difference between the reports in the number of elevations shown. My report shows an elevation on each ridge and Nease's report shows no elevation except on the forty line. I put elevations at the creeks and ridges because that was the instructions. I made the soil plat or a land description plat on field report of section two, township 38 north, range six, east, which bears my name, except the interlined places along the north border and except the description marked D-4. I made all the land description plat on the field report on section three, township 38 north, range six east, except D-4 at the top of the plat. That indicates steep, rough and rocky ground.

I found no soil of that description and I know of no reason why it should be described so in the report. The figures D-4 on Nease's reports on section 35, township 39 north, range six east, indicates steep, rough and rocky ground. I was employed by the county to do some cruising in company with Mr. John Swanson and Mr. L. E. Albright in townships 35, 37 and 39 north, range five east. We estimated all the pine and white fir together. I took the red fir and cedar poles and Mr. Swanson took the tamarack and ties. We divided up the work that way so as to make it easier for us to get an accurate report on the principal timber. Mr. Albright ran the compass taking the distances and the topographic features. We began doing this work for the county on the 26th day of March of this year and finished it on the fourth day of May of this year. In doing the work I used the usual method employed by cruisers in double running and in this case we took extra care to get a close check so as to be fair. We measured a large percentage, far more than usual, of the trees, and we availed ourselves of every opportunity to measure up down trees taking dimensions and top diameters. We measured up on this work something over 1200 white pine tree butts to get the diameters. I measured up considerable trees on each forty to get a very fair average butt, and the other timbers whenever I considered it necessary I would measure them up too. I made my measurements with the yard stick—placed this stick up against the trees and took the level of the trees and at the same time give the man an oppor-

tunity to allow for defects in the tree, and in making these butt allowances allowance was made for everything but defect, swells and bark counted out, as, for instance, when we have a tree showing a 22 inch butt, oftentimes that would be 24 or 25 if it was allowed to stand full. I made those butt measurements, and the defects were allowed for in another way, oftentimes by allowing a log less; sometimes, where there was only half a log this allowance was made, and after figuring up the timber to allow a percentage off for that. We didn't use the same methods on every forty, because we went according to the timber that we found, a great deal, and conditions. We cruised about 201 acres per day for actual working time, all three of us working together. The conditions facilitated the work for they were very favorable, both as to weather conditions and surface of the ground. We worked on snow for the greater part of the time and we used snow shoes in the afternoon after the snow began to thaw, but during the morning hours conditions were perfect. I do not think that the two of us working together would enable us to cover any more ground in a day than a man working alone. It would perhaps take a little bit longer for the same ground due to the fact that a little more time would be taken at the end in checking up together. We used the straight system, counting the timber two rods on each side of us. We kept count of the principal timber on tally registers, which are counting machines something like a speedometer, running from one to one thousand. As a rule

we checked up together so that if there was any great difference and we could not agree on the number of trees on any forty we left that to be recruised. Our estimates were independent of everything except where we took a different kind of timber and transferred it onto our own books, then we took the other man's estimate on that. I did the red fir, cedar, and cedar poles, and Mr. Swanson did the tamarack and ties, and we did the spruce and fir together. Sometimes we treated the red fir as ties. Sometimes Swanson would take trees too small for ties and he would speak to me about it so that we would not recruise it. The first section we cruised was section 34 in township 35 north, range five east. I have my field notes for the work.

The defendant then offered in evidence a tabulated statement showing the amount of timber in thousands of feet and also poles and ties found by Mr. Wherry and Mr. Swanson in the cruises made by them for the county in the months of March, April and May, 1916, as compared with the cruises reported by Mr. Nease to Clearwater county. The plaintiff by its counsel objected to such statement being received in evidence on the following grounds:

1. The purpose of the statement offered is to show that the cruise made by Mr. Wherry and Mr. Swanson and Mr. Albright in March, April and May of 1916 is at variance with the cruise made by Mr. Nease under his contract and filed with the county. It does not tend to show any collusion or fraud. That the fact, if such it be, that the estimates made by Mr.

Wherry and Mr. Swanson do not agree with the estimates made by Mr. Nease's cruisers of the same land is not material to any of the issues in this case. The question whether the Nease cruise is in some respects inaccurate is not a matter to be tried in this case.

2. Under the terms of the contract between Nease and the county Nease was bound and it was his privilege to recruise and make good any work that the county should reject. If any of Nease's work was faulty the remedy of the county was to require the work to be made good.

3. After having accepted the work the county cannot now relieve itself from such acceptance by showing that some of the work was not properly done.

4. The contractor Nease entered into a bond with the county to protect the county and conditioned for the faithful performance of his work. This bond did not expire until October, 1915. There is no claim nor evidence that there has been any concealment from the county of the character of the work done.

Thereupon the court over-ruled the objection and permitted the statement to be received in evidence on the ground that the facts shown by the statement might be some of the circumstances which taken together with other evidence the defendant would have a right to argue tended to show collusion, a conspiracy and fraud.

Thereupon the above mentioned statement was marked Defendants' Exhibit Four.

Continuing the witness testified as follows:

Statement marked Defendants' Exhibit Four shows all the figures and estimates made by myself and Swanson in our cruises for the county and is a correct copy of my field books of cruises.

The defendants by their counsel then offered in evidence a comparative statement showing the different varieties of timber and the total number of poles as shown by Mr. Nease's report and Mr. Wherry's estimates on two forty acre tracts in section 25; four forty acre tracts in section 35, all in township 37 north, range five east; three forty acre tracts in section 2; four forty acre tracts in section 11; thirteen forty acre tracts in section 14; and four forty acre tracts in section fifteen; four forty acre tracts in section twenty-four; four forty acre tracts in section twenty-five; all in township thirty-nine north, range five east, which the witness Wherry testified to be correct, and thereupon plaintiff by its counsel objected to the statement being received in evidence not upon the ground that it was a compilation by the witness but upon the same grounds upon which plaintiff objected to the introduction in evidence of defendants' exhibit Number Four. The plaintiff's objection was overruled by the court and the statement was marked Defendants' Exhibit Number Five.

Continuing the witness testified:

When I went out to do this check cruising for the county I did not know how much timber Mr. Nease's reports showed on the lands which I checked. While doing this check cruising I made an examination of

the corners to determine whether or not Mr. Nease's cruisers had checked up at the corners. I looked to see whether there was any letter N marked up or any name or dates.

Thereupon the following colloquy occurred between one of the counsel for the plaintiff and the court:

MR. POWELL:

"The court will understand of course that the same objection goes to all this line of examination.

THE COURT:

"Yes, that will be understood."

Continuing the witness testified:

I failed to find any letter N marked up by Nease's cruisers as follows:

In township 35 north, range five, section 27, southwest of the northwest and the northwest of the southwest, 80 acres; section 34, northeast corner; township 37 north, range five east, section 25, southwest corner; quarter corner, west line; section 26, northwest corner; southwest corner; quarter corner, east line; section 35, northeast corner; also southwest; township 39, north, range five east, section two, quarter corner, south line; section eleven, southwest and southeast corners; section twelve, southwest corner; in township 37 north, range five east, section 14, northeast corner and northwest corner, quarter corner, south line; section 15, northeast corner, section 24, northwest corner, section 25, northwest and southwest corners. I have had seven years actual experience at logging and cutting timber previous to

the time I started cruising. This is of value in estimating because it gives a man a practical knowledge of timber so as to enable him to make eliminations for defects, breakage in falling, and so forth.

On cross examination the witness Wherry testified as follows:

During the time Mr. Swanson and Mr. Albright and myself were doing the check cruising for the county in March, April and May, we worked every day except one, from March 29 to May 4. Mr. Swanson received the descriptions of the land that were to be cruised from Mr. Becker, one of the counsel for the defendants. There was no written instructions given us at any time and we were supposed to make an absolute check of the land by methods employed by cruisers and to double run. We were told to make a careful estimate and to double run each forty. I gathered from our instructions that we were to make a careful, accurate, impartial estimate of the land. And we did so.

I am prejudiced against Mr. Nease, but notwithstanding I was prejudiced against him that would not induce me to jeopardize my own reputation trying to turn in a crooked estimate or to ruin some other man's reputation as a cruiser. I have quite a bitter feeling against Mr. Nease but that would not influence me in my work. In doing the work for the county I had no figures of Mr. Nease's. I consider this controversy in a way as a personal matter—a fight between myself and Mr. Nease and I may have so expressed myself a number of times. I may have

stated various times that I was going to get him, meaning by that to get him as a cruising proposition.

Thereupon the plaintiff by its counsel offered and there was received in evidence Plaintiff's Exhibit Number Eleven, which is a letter written by the witness Wherry to Mr. Thomas Laughlin, from Pierce, Idaho, and dated April 30, 1916.

The plaintiff then offered and there was received in evidence Plaintiff's Exhibit Number Twelve, which is a letter written by the witness Wherry to Mr. H. M. Leighton, from Pierce, Idaho, dated April 4, 1916.

Continuing, the witness testified:

The expression, sons of B——, used by me in a letter marked Plaintiff's Exhibit Twelve was intended by me to apply to Mr. Nease with others.

Plaintiff by its counsel then offered and there was received in evidence Plaintiff's Exhibit Number Thirteen, which was a letter written by the witness Wherry to Mr. H. M. Leighton from Wierpe, Idaho, and dated March 27, 1916.

Continuing, the witness testified as follows:

Mr. Swanson is a competent cruiser. I got the impression that I was being rushed in the cruising which I did for Mr. Nease in the fall of 1914 because my instructions were to get more acreage every time I met Mr. Nease because we were in a hurry to get through in Clearwater county. There was nothing said to the effect that I should slight my work and I did not get that impression. My impression was that acreage was the main thing wanted regardless of the quality of the work.

Plaintiff by its counsel offered and there was received in evidence Plaintiff's Exhibit Number Fourteen which is a letter from M. G. Nease written to the witness Wherry and dated September 28, 1914. Plaintiff then offered and there was received in evidence Plaintiff's Exhibit Number Fifteen, which was a letter written by the witness Wherry to M. G. Nease and dated October 4, 1914.

Continuing, the witness testified as follows:

I cruised approximately 34,000 acres for Mr. Nease in Clearwater county, and I made a report on each and every section thereof to Mr. Nease, and I made no report that was not to the best of my knowledge and ability correct. I actually cruised and estimated the land which I reported on to him. In doing the check cruising for the county in 1916 I cruised thirty-two forties alone and the balance I cruised with Mr. Swanson, the total acreage being 6440 acres. In making that cruise I took a strip two rods on each side of me on each run through a forty. In this manner I would actually cover on a double run four acres out of each forty. It is much easier to get over the ground when snow is on when the snow is off the ground. It is the rough ground and the underbrush that makes it heavy going. Whether the ground is easy or difficult to cover makes a great deal of difference in the accuracy of the estimate of the cruiser. Because naturally when a man is going over hard ground and gets tired he does not do his work so well. I could do twice as much ground around Weippe as I could in a rough country. The

daily average of the ground covered by me while cruising for Mr. Nease in Clearwater county was about 320 acres a day. I worked 102 days and I did not count in the days that I spent in moving. In doing the check cruising with Mr. Swanson for the county in 1916 I was more than usually careful in making the estimate. It was more careful work than is usually done for commercial or county purposes. We did more actual measuring getting diameters and in getting the work done a little better. I think it likely that it is more correct than it would be if a man was not working on what I call special work. In doing this work I cruised all the merchantable timber on the basis of a common sense cruise. I did not take white pine down lower than about 16 inches. Perhaps one forty had 15-inch butts, a few logs of that size. I did not estimate tops under 8 inches. I had no instructions about that, I followed my own judgment in that matter. I don't confine myself to instructions in such matters when I am in the woods. A man is forced to use his own judgment. A good cruiser is supposed to use his own judgment largely when sent out to estimate timber. He may have certain instructions regarding certain timber and kinds but there is no fixed rule to go by that I ever heard of or encountered, and I would consider that any other competent cruiser would do likewise.

On re-direct examination the witness Wherry testified as follows:

I could have made a better estimate on the land that I cruised for Mr. Nease if I had gone through

each forty twice. It is my experience that a complete, accurate and thorough estimate cannot be made on a single-run cruise. The suit case incident which I referred to in the letter marked Plaintiff's Exhibit Twelve and also in the letter marked Plaintiff's Exhibit Thirteen was this: At the time I came up here to Orofino for the first time in regard to this matter I went over to the Hotel where I had stopped before and I owed them a bill there, and I hadn't been there for some time, and when I went up they were mighty glad to see me, and I went and got my suit case and some papers I had in it, including my field books, that is, they were not in there. I went back to Portland. On the day I left Portland, or the day before, I went back to this hotel with my suit case to get the rest of my cruising outfit; I had it there, and I had been told I could have it any time I wished it, and I left my suit case there in the morning, with the intention of coming back in the afternoon, and when I came back in the afternoon they had taken my suit case and locked it up, and refused to let me have access to it, and in the suit case I had some papers. What I meant by sealing and locking it was so that I would be able to tell if any disturbance was made in the books, which I find was made. There was nothing in the suit case of any value to the landlord and it looked very much to me like the handiwork of Mr. Nease. I suppose that Mr. Nease knew that I was coming up here to do this work of course as I had talked with two or three people in Portland about it. I had told Leighton.

On re-cross examination the witness Wherry testified as follows:

J. D. Lacey and Company is the only timber company that I know of that requires going through a forty-acre tract sixteen times in cruising it. In my opinion that is largely bunk because you do not get any better average by going through it sixteen times than by going through it twice. You get a better average by making a double run than by making a single run because you see more of the land. In this country it is impossible to do accurate work on a single run. A man may think he is doing it and I have no doubt that many of the men that were working for Nease were conscientious enough.

On further re-direct examination the witness Wherry testified:

I did not know whether the figures compiled by me in the woods in making this cruising check for the county were higher or lower than Nease's figures until I arrived at Orofino except as to two sections; and I don't know yet. I have not had time to check them over. I helped compare them but I have made no check of the whole amount. The way I came to know that we were going over the same ground that Miller and Snyder checked was that I found Miller's name registered at one of the townships and at the other Snyder's. I assumed that it was their work because they were marked up at the corners in writing. I had no other way of knowing that I was going over Miller and Snyder's work.

The witness was excused.

MELVILLE SMALL, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

I live at Orofino, Idaho. I have twice compared the figures shown in red opposite the name Nease on defendants' Exhibit Number Four with the estimates of Mr. Nease as filed in the records of the assessor of Clearwater county and I found them correct. I have also examined and checked the comparative statement marked Defendants' Exhibit Number Five. I have checked it with reference to the figures of Mr. Nease shown thereon in red and the same is correct.

Thereupon the defendants by their counsel offered in evidence said comparative statement marked Defendants' Exhibit Number Five. The plaintiff by its counsel objected to the said statement and to the reception of the same in evidence upon the same grounds of objection theretofore given by the plaintiff to any evidence tending to prove the inaccuracy of the Nease work and upon the grounds of objection theretofore urged by the plaintiff to the reception of said statement in evidence which objections appear upon pages 41, 42 and 43 hereof. Thereupon the plaintiff's objections were overruled by the court and the said statement was received in evidence.

The witness was excused.

JOHN SWANSON, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

I live at Orofino, Idaho, and am 53 years of age.

I have had experience as a woodsman for about 32 years. I started in cruising in 1907, working as a compassman until the fall of 1909 when I began cruising, which continued to be my principal occupation until the spring of 1914.

I began cruising work for Clearwater county in company with Mr. Roy Wherry and Mr. Albright on the 29th day of March, 1916. Mr. Wherry and myself cruised the timber and Mr. Albright ran the compass and took the topography. In doing this work we took four rods strip. We measured up once in a while to get the average of the sizes and measured up wind-falls to get the size of the tops and the length of the timber on the ground. I had no figures of Mr. Nease or any other estimator while doing this work. I did not know how our result compared with those of Mr. Nease until after our work was completed. In doing this cruising for Clearwater county I cruised on an average of about 160 acres a day. Mr. Wherry averaged a little more than I did. I was absent two or three times during the work. The figures in my field books used on this work are all my own and I have the book in my possession. I have compared the tabulation marked Defendants' Exhibit Four and it is correct, and my signature is on the certificate thereto.

Thereupon the defendants by their counsel offered in evidence the tabulation marked Defendants' Exhibit Number Four. The plaintiff objected to the same and to the reception of the same in evidence upon the same grounds of objection theretofore given

by the plaintiff to any evidence tending to prove the inaccuracy of the Nease work and upon the grounds of objection theretofore urged by the plaintiff to the reception of said statement in evidence which objections appear upon page 41 and 42 hereof. Thereupon the plaintiff's objections were overruled by the court and the said statement was received in evidence.

Continuing, the witness Swanson testified as follows:

In the above cruising for Clearwater county I cruised the tamarack and ties and Mr. Wherry cruised the red fir, cedar and cedar poles. Tamarack, red fir and cedar has only about one-third the value of white pine. I think the second growth white pine would be worth about Two Dollars a thousand and the old growth anywhere from Four to Five Dollars a thousand. The red fir, tamarack and cedar would be worth about Fifty Cents a thousand. My experience in cruising Clearwater county has been that I had to run through each forty-acre tract twice to get results. I think it possible that the result of a single run on a large district would bring practically the same result as a double run, but in my judgment one cannot arrive accurately at the amount of timber in individual forty-acre tracts by a single run method of cruising. In making the cruise in company with Mr. Wherry for Clearwater county I did not knowingly omit any precautions to arrive at an accurate estimate of the timber. We measured more timber and more butts than is usually done in ordi-

nary cruising. I think Mr. Wherry is a competent cruiser and that Mr. Albright was a competent man to report on the topography. We found all the corners where they existed.

On cross examination the witness Swanson testified as following:

I began cruising in 1909 for Clearwater Timber Company. I have also cruised probably thirty or forty claims for individuals. A claim is 160 acres and it would take me about one day to cruise it. All the rest of my cruising has been for the Clearwater Timber Company. Mr. Fohl is the agent of the Clearwater Timber Company and looks after their interest in Clearwater county and lives at Orofino. I was not in the employ of the Clearwater Timber Company in 1914. I was appointed fire warden for Clearwater Timber Protective Association in March, 1914. I worked for the Clearwater Timber Company a little in the fall of that year. The instructions given me before doing the cruising for Clearwater county in the spring of 1916 were given to me by Mr. Becker and were to the effect that we were to do the work thoroughly and carefully.

On re-direct examination the witness Swanson testified as follows:

Mr. Becker in giving me my instructions for the cruising done for the Clearwater county in 1916 told me not to try to get over too much ground.

On re-cross examination the witness Swanson testified as follows:

I obeyed the instructions not to cover too much ground.

FRED BAILEY, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

I worked in the timber during the Nease cruise. Mr. Archie Young cruised sections 24 and 25, in township 39 north, range five east. I was with him at the time. I was working after him checking him up for the Clearwater Timber Company. This was in May, 1914. Mr. Young in examining said sections 24 and 25 just followed up and back on a stream which ran through the section. The compassman was Mr. Cox and he did not pace the distance. Mr. Young did not leave the trail. The compassman did not go to all the corners in these two sections but only to one corner, the northwest corner. I do not know how the compassman got the elevations unless he guessed at them. I do not know how long it took Young to cruise these two sections but he just walked up through and back the trail. Did not go through all thirty-two forties in these two sections. He went through the two sections and came back over the same course.

On cross examination the witness Bailey testified as follows:

I was paid by the Clearwater Timber Company for following Young and checking up his work. I don't know how many days I spent doing it but I was there something over a month. I was not following Young all the time but was following others of Nease's cruisers for the rest of the time. After Young had passed through sections 24 and 25, town-

ship 39 north, range five east, and back, he went to work at another section and I went with him. I think I followed him for about eleven days. I do not know anything about the result of his work on those sections. I talked with Mr. Young while I was following him and checking him up and camped with him. I followed right along after him as I went through the woods in plain sight of him and I suppose he knew what I was there for.

The witness was excused.

Thereupon the court adjourned until 9:30 A. M., on Wednesday, May 10, 1916.

On Wednesday, May 10, 1916, at 9:30 A. M., the court re-convened.

Thereupon counsel for the respective parties called the attention of the court to the fact that amendments to the pleadings had been made as theretofore permitted by the court.

Thereupon it was stipulated between the parties that amendments of the answer by interlineation may be considered as specifically denied by the plaintiff's reply, and it was further understood and ordered by the court that all amendments made during the course of the trial by either side should be deemed to be denied by the other.

JAMES A. MORROW, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows: I reside at Lewiston, Idaho, and am 53 years of age and my occupation is cruising part of the time and part of the time mining.

The defendants by their counsel then offered in

evidence the report of M. G. Nease to the defendant county of his cruising of sections 27, township 35 north, range five east, sections 34, township 35 north, range five east, section 13, township 37 north, range five east, sections 24, 25, 26, 33, 34, 35, in township 37 north, range five east, and sections 2, 11, 12, 14, 15, 24 and 25, in township 39 north, range five east, being the lands cruised by the witness Wherry and the witness Swanson in their check of Nease's cruise. These reports were offered in evidence not for the purpose of showing the topography but only the timber estimate and the report on the character and kind of timber, burns, etc. Said reports were received in evidence and marked Defendants Exhibit Number Six.

The defendants then offered and there was received in evidence Defendants' Exhibit Number Seven, being the report of M. G. Nease of his cruise on section 3, township 41 north, range one east, sections 5, 18, 19 and 28, township 38 north, range two east; sections 20, 21, 22, 27, 32, 33 and 34, township 39 north, range two east; section three, township 34 north, range five east; sections 30 and 31, township 36 north, range five east; section 26, township 37 north, range six east; section nine, township 38 north, range seven east; and section one, township 37 north, range eight east.

The defendants then offered and there was received in evidence Defendants' Exhibit Number Eight, which is the reports of M. G. Nease to Clearwater county of his cruise on sections 15, 23 and 26, township 35 north, range four east.

The defendants then offered and there was received in evidence Defendants' Exhibit Number Nine, which is the reports of M. G. Nease to Clearwater county of his cruise of sections 31, 32 and 33 in township 40 north, range two east.

The defendants then offered and there was received in evidence Defendants' Exhibit Number Ten, which is the report of M. G. Nease to Clearwater county of his cruise of sections 2, 12 and 27, township 39 north, range four east.

Thereupon the defendants offered in evidence Defendants' Exhibit Number Eleven, which is the topographic sketch on the back of the original field report of the witness Wherry of his cruise of section six, township 38 north, range six east, which he made for M. G. Nease, and the original topographic plat of said section turned in by Nease as a part of his report on the same section to Clearwater county. The plaintiff thereupon objected to said documents being received in evidence on the ground that they did not tend to prove anything which is in issue in the case. The court overruled the objection and the same were received and marked Defendants' Exhibit Eleven.

The defendants by their counsel then offered and there was received in evidence Defendants' Exhibit Number Twelve, which is the original report of M. G. Nease on section 34, township 35 north, range five east.

Defendants by their counsel thereupon offered and there was received in evidence Defendants' Exhibit Number Thirteen, which is the report of M. G. Nease

to Clearwater county of his cruise of section 13, township 37 north, range five east.

The defendants thereupon offered and there was received in evidence defendants' Exhibit Number 14, which is the report of M. G. Nease made to Clearwater county on his cruise of section 26, township 37 north, range five east.

Defendants then offered and there was received in evidence defendants' Exhibit Number 15, which is the report of M. G. Nease made to Clearwater county of his cruise of section 35, township 37 north, range five east.

The defendants by their counsel then offered and there was received in evidence Defendants' Exhibit No. 16, which is the report of M. G. Nease made to Clearwater county of his cruise of section 24, township 39 north, range five east.

The defendants by their counsel then offered and there was received in evidence Defendants' Exhibit Number 17, which is the report of M. G. Nease to Clearwater county of his cruise on section 25, township 39 north, range five east.

The court granted permission to the defendants to substitute a copy of each of the defendants' exhibits numbered six, seven, eight, nine, ten, eleven, twelve, thirteen, 14, 15, 16 and 17 in lieu of the original, to which substitution the plaintiff made no objection.

Continuing, the witness Morrow testified:

I worked for Mr. Nease in the spring of 1914 but did not work for him in the fall. I cruised about six sections for him. I was out in the field about 26 days.

I cruised a half of section 13, township 39 north, range six east, and I cruised one forty acre tract in section 14, and I think the whole of sections 15, 16, 17 and 18 in that township. The figures 1220 on the line marked northwest of northeast on my report on section 18 are in lead pencil and have been changed in ink to 950. This is in the white pine column. That change was not in the report when I turned it in to Mr. Nease. This is true also with reference to the change in the figures 240 in the white fir column to 145 and of the figures 35 in the cedar column to 150. All my figures are in pencil. The figures 1540 on the line marked northeast of the northwest in the white pine column have been changed in ink to 650. This is true of my figures 230 under the white fir column which have been changed to 150 in ink and in the tamarack column 10 has been added in ink and in the cedar column my figures 75 have been changed to 125. None of the figures in ink are mine; and none of them were on the report when I turned it in to Mr. Nease. Opposite the line northwest of northwest my figures 1035 have been changed to 700 and on the line southwest of northwest my figures 955 have been changed to 705, and on the line southeast of northwest my figures 1100 have been changed to 750. All these in white pine column. None of these changed figures which are in ink were on the report when I turned it in to Mr. Nease.

Thereupon it was admitted in open court by the plaintiff that every change in every original report that has been made was made not by the cruisers but

by Mr. Nease in his office and that every report upon which a change has been made shows such change in ink, and announced in open court that the plaintiff had all reports upon which any such changes had been made segregated for inspection.

Continuing, the witness Morrow testified:

On my report on the above section 19 on the line southwest of northeast my figures 1155 in the white pine column have been changed to 800 and on the southeast of the northeast my figures 1325 have been changed to 1000. None of these changes were on the report when I turned it in to Mr. Nease. The figures 1325 under the white pine column would indicate 1,325,000 and the changed figures of 1,000 in ink would indicate 1,000,000 feet of lumber.

On my report on section 21 on the northwest quarter of the northeast quarter my figures of 315 for white pine have been changed in ink to 820 and my figures 935 for white pine on the northeast of the northwest have been changed to 1175 and my figures 475 for white fir on the northeast of the northwest have been changed to 75 and my figures 250 on the northwest of the northwest have been changed to 125. He cruised the north half of section 23 and the north half of section 24 in township 39 north, range six east.

Thereupon it was stipulated in open court that the acreage of the tracts that the witness testified he had cruised amounted to 5,274.96 acres.

Proceeding, the witness testified as follows:

I actually cruised all of the land about which I

have been testifying by the strip system and went twice through each forty. I used the method which I always used and I think I arrived at a careful and accurate estimate of the amount of timber on the land and to the best of my knowledge the figures placed on my report of the cruise of section 18 and which have been changed as I have above testified show the actual quantity of the respective kinds of timber as I found it on the ground at the time of cruising it.

Mr. McKay was foreman for Mr. Nease. He and I both cruised one forty acre tract and there was only a few thousand feet difference in our estimates. I think a difference of ten or twelve thousand feet in the estimates of the timber of a forty acre tract would be reasonably close.

After I had settled up with Mr. Nease we were talking in his office about the reports and he said that some men may be good cruisers but they may be a little high or a little low and that he reserved the right to raise or lower the cruisers' estimates but he did not say that he was going to raise or lower any of them. In cruising where I double run I can average from a quarter to a half a section a day. I gave Mr. Nease some figures that I had on a cruise that I made of lands in township 38 north, range three east. He said he would like to see them and check them over and see how his cruise compared with mine. Mr. Nease never returned these figures to me. Mr. Nease never made any criticism of my work while I was cruising for him, and he did not call my attention

to the fact that I was cruising *to high* or *to low*, nor criticise me in any way. I did not know that my figures in any of my reports had been changed until I was in Orofino about the middle of last March. I at one time cruised for Mr. Brown and Schofield. The tabulated statement which is shown me correctly shows the comparative figures of Nease's cruise and my cruise for Brown and Schofield on the lands therein described. The figures 380 on the line northeast of the northeast which are midway between the red fir and the tamarack columns show that we estimated the tamarack and the red fir together. Three Hundred eighty means 380,000 feet board measure.

Thereupon defendants by their counsel offered in evidence the comparative statement last referred to by the witness Morrow. The plaintiff by its counsel objected to such offer and to the reception of said statement in evidence for the reason that a comparison of the cruises made by Mr. Nease and Mr. Morrow upon the same lands was not relevant or material to any of the issues in the case. The objection was overruled by the court and the statement was then received in evidence and marked Defendants' Exhibit Number 18.

On cross examination the witness Morrow testified as follows:

When I was cruising in township 39 north, range six east, I was cruising in heavy timber and it was hard going. I generally, with the exception of a few days, cruised a half section a day. In my conversation with Mr. Nease in regard to my figures for

cruising in township 38 north, range three east, he asked me if I had any figures on any of the timber anywhere in the Clearwater belt and I told him that that was about all I had and he asked me if he could check over my figures of a few forties to see how they ran in comparison with his work and I told him that he could. None of my figures were used by Mr. Nease so far as I know. His work had already been done in that township at that time. When I was working for Mr. Nease Mr. McKay and I would often figure up in the evening and we would always check out right together. At the request of Mr. McKay I recruited the northwest quarter of the northeast quarter of section 20 in township 39 north, range six east, and I raised my figures I think 150,000 on the white pine on that forty. It was a rainy, stormy day when I first cruised it and I might have got off on it on some point or other. It seems that the county checker had been over it and there was a difference between his figures and mine and I told him that I would go over it again for my own satisfaction in case there might be a mistake. Mr. McKay and Mr. Nease said that they wanted good fair estimates. Mr. Nease gave me the same written instructions that he gave the other cruisers. I never have heard of any custom where there are checkers employed and there is a variation in the work done by the men to adjust it by raising or lowering. I have often compared my estimates in cruising with those of other men. I did not find variations to any great amount. No two men will find exactly the same amount. There is

always some variation. Five to ten per cent variation is a normal amount. The difference in the estimates of the cruisers is caused by difference of judgment as to defects and breakage in falling and as to the amount of merchantable lumber in a tree. Cruising is not an exact science. It is a matter of judgment, which is acquired by experience in actual cruising.

The witness was excused.

JOHN R. BECKER, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

I reside at Orofino, Idaho. I have checked over the original reports of Nease's cruise returned by him to Clearwater county. There is something over 503,000 acres turned in by Mr. Nease and charged for and for which he received warrants. I compiled the statement to show the results of my examination of his reports and I have that statement with me. The numbers at the left show the township and range. The column headed "Charged" shows the acreage charged for by Mr. Nease in each township. The next two columns under the general heading "Patented" show the amount of land charged for by Mr. Nease and whether estimated or not estimated. The column headed "Estimated" under the double column headed "Patented" shows the acreage of the lands upon which he reported any timber taken by forty acre tracts; that is to say, if he reported any timber on a forty acre tract which was patented it is included in this column although his topography plat

may show that the larger part of the forty acre tract or lot was not timbered. The column headed "Not estimated", under the general heading "Patented" might more properly be headed "Not timbered;" that is to say, the figures in this column are made up of the forty acre tracts and lots upon which no timber is reported by Mr. Nease, being lands which, on January 1, 1915, had either passed to patent or to final certificate so as to be subject to taxation on that date. The next two columns show the acreage of lands reported by Mr. Nease which were not subject to taxation on January 1, 1915. The first of these columns, under the general head of "Unpatented" which is headed "Estimated" shows the acreage in each township made up of forty acre tracts and lots on which timber was reported by forty acre sub-divisions. The column headed "Not estimated" under the general head of "Unpatented" might more properly be headed "Not timbered." It is made up of forty acre sub-divisions and lots which were not subject to taxation prior to January 1, 1915, and on which forties and lots Mr. Nease reported no timber. The last column on the tabulation is made up by adding all of the lands indicated upon his plat of each section as brush, burns, openings, meadow lands, or other than green timber. On the topographic plats of Mr. Nease's reports the extent of a burn or other area other than green timber is indicated on each forty acre tract or lot. Under the last mentioned column headed "Not estimated" or not timbered is the acreage for which he charged but which is not shown as

green timber on his topography. The note at the bottom of the table "According to government surveys the amount charged is 560.86 acres in excess of actual areas claimed to have been cruised," refers to an error in township 36 north, range four east, where Mr. Nease returns on his plat and charges for on his bills some five or six hundred acres which is not shown on the government survey of that township and also included minor discrepancies between the bills and the actual acreage as shown by government survey. This statement shows that out of the 503,997.52 acres charged for by Mr. Nease 440,967.-50 were subject to taxation prior to January 1, 1915, and Mr. Nease reported some timber on every forty acre tract or lot comprising this total. That of the lands subject to taxation on January 1, 1915, 28,082.79 did not have any timber on any forty acre sub-division or lot according to Mr. Nease's report, and for which he charged. That of the lands not subject to taxation on January 1, 1915, Mr. Nease reported timber on 26,706.59 acres by forty acre sub-divisions and lots, and that he reported no timber on any forty acre sub-division of 7,679.78 of the lands not subject to taxation. I have checked this compilation with the original report of Mr. Nease and it is correct.

Thereupon the defendants offered said comparative table in evidence and it was received and marked Defendants' Exhibit Number 19.

Defendants by their counsel then offered and there was received in evidence Defendants' Exhibit Num-

ber 20, which is thirty-eight plats certified by the register of the United States land office at Lewiston, Idaho, under date of April 19, 1916.

On cross examination the witness Becker testified as follows:

The last column in the tabulated statement marked Defendants' Exhibit Number 19 which is headed "Platted as Not Timbered" includes all entire forty acre tracts which were reported as having no timber; and also openings, clearings, etc., being such parts of other forty acre tracts which were reported to have some timber as were included within the burns, marshes, openings, clearings, etc.

On re-direct examination the witness Becker testified as follows:

If Mr. Nease reported any timber at all on any forty acre tract I included the entire forty acres in the column "Estimated" on Defendants' Exhibit Number 19. For example: If his topography on his report of a forty acre tract showed only one acre of green timber and 39 acres burned, I put the entire forty acres under the column "Estimated." I have examined the original field reports turned in to Mr. Nease by his cruisers. According to the field reports which I have examined Mr. Albright cruised 13,600.64 acres; Mr. Bennison, 15,088.68; Mr. Conry, 20,023.10; Mr. Cronan, 16,998.23; Mr. Clark, 37,441.91; Mr. Dockery, 22,421.66; Mr. Hart, 14,547.51; Mr. Hamer, 29,464.72; Mr. Kelley, 13,085.17; Mr. Johnston, 18,796.78; Mr. McCombs, 31,732.49; Mr. McKay, 11,197.24; Mr. Murray, 29,714.51;

Mr. Miller, 26,832.59; Mr. Morrow, 5,274.96; Mr. Olinger, 33,819.93; Mr. Peneger, 15,869.52; Mr. Randolph, 31,735.25; Mr. Snyder, 27,790.57; Mr. Slattery, 15,866.35; Mr. Tuttle, 19,584.41; Wherry, 34,497.93; Weir, 8,728.63; Young, 9,884.75; making a total of 503,997.52. I have also found from these field reports that Mr. Albright worked only during the fall cruise, that is, his reports are dated in August, September, or October, 1914. This is true also of Mr. Conroy, Mr. Cronan, Mr. Dockery, Mr. Hart, Mr. Hamer, Mr. Kelley, Mr. Johnston, Mr. Miller, Mr. Penegor, Mr. Snyder, Mr. Slattery, Mr. Tuttle, and Mr. Weir. That Mr. Morrow worked only in the spring, that is, his reports are dated prior to July 1, 1914. I have also found that Mr. Randolph did 3,862.16 acres in the spring, and 27,873.09 acres in the fall.

On re-cross examination the witness Becker testified as follows:

Mr. Young and Mr. Bennison worked only in the spring. Mr. Clark cruised in the spring 7961.24. The balance of his cruising was done in the fall. McCombs, McKay, Murray and Wherry work both spring and fall. Olinger cruised 3856.38 acres in the spring.

The witness was excused.

BENJAMIN E. BUSH, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

I have had more or less experience in the past twenty years in cruising timber. For the past seven

years I have been field agent for the Idaho State Land Department looking after the state timber, making selections and sales and protecting it from fire. My method of cruising in normal timber always has been to go twice through a forty acre tract taking a strip each time six rods wide, counting the timber on two strips through, making a total of twelve rods. If the timber runs even I multiply the amount of timber by six and two-thirds which would give me the amount on a forty acre tract. Often times, however, there are bare spots and burns for which allowances must be made. I do not think that a single run cruise is of any value for commercial or assessment purposes on forty acre tracts although it might be fairly good average on large tract. I have employed timber cruisers and I have never asked a cruiser to average over a quarter section a day in his cruises. Sometimes in ordinary timber it is possible to get a half section and other times it will fall below the quarter section. I doubt if a cruiser could average a quarter of a section a day if he followed the written instructions given by Mr. Nease to his cruisers which have just been read to me. Aneroid topography is only approximate. I do not think that it would be possible for a man to get all of the data with reasonable accuracy called for by those instructions in passing through a forty acre tract only once.

On cross examination the witness Bush testified as follows:

I have never had any experience in taking observations from aneroid barometers. The cruising of

timber is only an estimate and two men cruising the same piece of land at different places may get a different result. There will be more discrepancy in case of single running than double running. Double runs by different men should not show extensive variation. However sometimes they vary widely. I have never had any experience in double run cruising. I know that it is customary for the cruiser if the character of the timber changes at all to offset. That is, run a certain distance to the right or to the left, perhaps four or five offsets in the same forty acres. There is a great deal of open country around Weippe and it is not as heavily timbered as in the Clearwater country or in the Pierce City country. There are cases in which you can't get a fair estimate even with a double run cruise. All cruising is but an estimate and two experienced estimators may vary materially in their estimates. If a cruiser in his cruising actually sees and counts only four acres out of the forty acres I would not consider his estimate an estimate at all. The accuracy of the estimate does not necessarily depend upon the amount of the forty acre tract which the cruiser actually covers and counts. It depends largely upon the amount of the land he can see upon each side of him as he passes through it. If a man uses a single run system in cruising and actually counts the trees on as large a percentage of the area as the man who double runs it and sees an average quality of the timber on the whole forty he will not get as good a result as by double running because he is too far away

from the other portions of the land to be able to judge it properly. If a man makes a double run cruise he will not get as accurate an estimate as if he made four runs. The more runs the cruiser makes and the larger the area of the tract upon which he actually counts the trees the more accurate his estimate will be unless he overlaps and counts a number of trees twice. There are probably more than 47 different systems of cruising. Cruising is nothing more at best than an estimate based largely upon the judgment of the estimator which he gains by experience in the field.

On re-direct examination the witness Bush testified as follows:

It is not customary for cruisers to use the same width of strip as I do. I know of no one else that does so. Cruisers generally use a strip from two to four rods. In my opinion the wider the strip the more accurate the estimate. I do not mean that a cruise where a man took only a four rod strip would be worthless. It would have some value, and if the timber is running even it is probably just as good as the six rod cruise.

The witness was excused.

FRANK HARRISON, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

I live at Fraser, Idaho; am a farmer by occupation and was county commissioner of the first district for Clearwater county in February, 1914, and was present at the meeting of the board of county commis-

sioners on February 24, 1914, when the contract was entered into with M. G. Nease. Before entering into that contract the members of the board of county commissioners had taken whatever steps they thought they needed to take to investigate Mr. Nease and his work. We inquired by letter of other counties and two of the commissioners went into other counties where he had cruised and investigated. I did not go myself but the other two commissioners brought back letters of reference that were shown to me which were very favorable to Mr. Nease. I also received some newspaper clippings from Theodore Fohl, who represents the Clearwater Timber Company in Clearwater county, that were unfavorable to Mr. Nease. I gave these newspaper clippings back to Mr. Fohl because he said they belonged to the company and he did not want to have them filed in the county records. Before returning them to Mr. Fohl I took them to the court house for the other commissioners to read and they were there on the day of the meeting on February 24. These newspaper clippings were unfavorable comment on Mr. Nease's work as a cruiser.

At the meeting of February 24, 1914, the board of county commissioners considered other bids besides that of Mr. Nease. These other bids had been received by the board some time prior to the meeting. Mr. Swanson and Mr. Portfors also intimated that they desired to bid. I talked with Mr. Portfors myself personally and I told him that we wanted everybody to bid so that we could take the best one. He did

not offer to bid, and said he did not want to. I heard Mr. Portfors' deposition read in court yesterday and his statement that he asked me for time in which to prepare a bid is not correct. We gave him plenty of time, more time than he asked to submit a bid. He was before the board at about ten or half past ten in the forenoon and I asked him if he wanted to put in a bid and he said Yes, and I replied that we would like to have him do so, and asked him how long it would take him to prepare a bid, and he said about an hour or something like that. I then told him to go ahead, we would give him plenty of time. He went away and came back after dinner about half past one. I asked him if he had brought his bid and he said No that he did not think he wanted to put in a bid. I did not vote on the letting of the first contract of February 24. One of the other members of the board made the motion and another seconded it and they asked me how that was and I said it was all right with me. I made no objection. I was really in favor of the contract, but the reason I did not directly vote for it was because Theodore Fohl called me up that morning by telephone while I was at breakfast at Mr. Snyder's house where I was stopping and asked if he could talk with me a little while that morning and I told him that he could, and went down to Mr. Snyder's office and met Mr. Fohl there. He then asked me if the board was going to let the contract for cruising and I told him that I supposed we would but was not sure, that the board was considering it and that when we got through considering it either

that day or some other day I thought we would let a contract. He then asked me if we had looked up this man Nease and I told him we had and he then asked me if we were going to let Nease have the contract and I told him that I did not know yet that I was only one member of the board. He then said: "I have a couple of friends who have worked for us who I would like to see do the cruising." I asked him who they were and he said John Swanson and Portfors. I told him they would be given due consideration. Then he gave me the scrap book containing the newspaper clippings with unfavorable comments on Nease. He told me he would like to have me take them and look them over and I told him I would do so. I felt abused that a representative of the Clearwater Timber Company would come to a member of the board out of session and insist and urge that their cruisers should do the cruising. I felt injured and I would not vote at all any more than to say that it was all right and the other two members put the motion.

The designation of the land which Mr. Nease was to cruise under his contract was talked over at one time. Mr. Blake, the county assessor, and Mr. Nease came before the board in session and one of them made the remark that in cruising they would find a forty or perhaps an eighty acre tract or maybe 160 acres where they had to cruise all the way round it and wanted to know if it would not be good business policy to cruise these small pieces as they went along as they were like the land they were then cruising

as they would subsequently be taken up or scripped. The board took no action that I know of withdrawing from the contract any state or government land. I did not know that Mr. Nease was cruising any state or government land except the small pieces as I have stated which he might come to in his cruising. I do not know what is the aggregate amount of state and government land cruised by Mr. Nease. I did not know that he was cruising and charging for lands in the forest reserve, nor for power site along the North Fork of the Clearwater River that were not subject to entry at the land office. I know nothing about what land he was cruising any more than when he brought in his reports we always saw the assessor and checked up with the assessor. Some report was filed before the board or we just asked Mr. Blake if the check was all right and he said it was. I personally did not check up Mr. Nease's bills to ascertain if his acreage was correct. I think the clerk of the board did that. We took the assessor's word for it and allowed Nease's bills on the assessor's approval. I am familiar with the character of the lands around Wieppe. The timber there is small thick timber and there is quite an area of prairie land. I understood that Mr. Nease was to cruise that land and classify it. The board had no opinion from the county attorney as to its right to cruise government and state land or to have agricultural land classified by a timber cruiser. We had a written opinion from the county attorney on the first contract with Mr. Nease. He dictated that contract himself. The opinion

which I refer to is Exhibit twelve attached to the answer in this case. After the county attorney had given us that opinion and we had determined to let the contract to Mr. Nease, Mr. Holsclaw towards evening came before the board and dictated the contract before the board, the members making such suggestions as occurred to them. I supposed that if the prosecuting attorney dictated the contract he considered it legal. He advised us verbally at the time. I do not know Ralph Hunt and have no information about him except such as Mr. Zelenka and Mr. Torgerson, the other two members of the board, gave me. I have met R. L. Rankin two or three times. I know nothing about his abilities as a timber cruiser. I did not favor letting a contract for the cruising to Mr. Hunt on the information which I gained from Mr. Zelenka and Mr. Torgerson as a result of their investigations. I do not remember when I first met Mr. Nease but it was a long time before the first contract was let. There was no notice calling for bids published by the board further than the notice calling the special meeting of the board for the purpose of considering making a contract for the cruising of the timber lands in the county. I do not know of my own knowledge whether the notice calling the special meeting was posted or published but I think the clerk of the board posted and published it. The board considered the question of how Mr. Nease was to be paid for the work which he did for the county. We talked it over at great length and was advised by Mr. George W. Tannahill of Lewiston, whom the board employed

to advise them, that we were proceeding legally. The board did pay Nease for his work. Mr. Tannahill was employed by the board of county commissioners the day before the second contract with Nease was written. We had him come up from Lewiston and under his advice the first contract with Mr. Nease was cancelled. He advised us that we had better do that and write another contract. There was a suit pending against the board at that time. I had been served with papers in that suit some little time before. I do not remember the affidavit of M. C. Ingram, which is Exhibit Seven attached to defendants' answer. I don't think I have ever seen it before. The suit which was pending against the board of county commissioners at the time we entered into the contract with Nease bearing date April 15, 1914, was the suit of John Lewis. It was a suit to restrain the county commissioners from cruising or paying for the cruise and I think the question of the legality of the contract or the right of the county commissioners to let such a contract was raised in that suit. In entering into another contract with Nease without waiting for the determination of that suit we acted on the advise of our attorney. I never saw the affidavit of W. F. McKinnon or the affidavit of A. Osborn, or the affidavit of J. P. Hagadone, or the affidavit of H. N. Price in the Lewis suit. I think I read all of the papers that were served upon me in that case, but I do not now remember the affidavits. At the time of entering into the contract with Nease I had some idea of how much it would cost. I inquired

of the assessor and he thought it would probably cost \$45,000, but that he had not gone over it carefully. The board of county commissioners knew at the time of the entering into the contract that we could not raise the money to pay Mr. Nease with the five mills levy for that year. We expected that the commissioners would raise the next year as much as they could with a five mill levy. I think that the five mill levy would raise about \$18,000 over and above the current expenses and which we would apply on the Nease contract. We expected the balance would be raised in succeeding years, as much of it as we could the following year. In entering into the new contract with Mr. Nease we acted wholly on the advice of our attorney. It was the practice while I was county commissioner for the board to let contracts for bridges upon public bids. We let some work on the North Fork road and on the Laset road involving more than Five Hundred Dollars by private bids. In letting contracts we got what legal opinion we could and satisfied ourselves that we were proceeding as we had a right to do. I don't know of any other instances except the work on the North Fork and the Laset roads where a contract exceeding Five Hundred Dollars was let without competition.

On cross examination the witness Harrison testified as follows:

We gave everybody who intimated that he wanted to bid on this cruising work an opportunity to bid. The matter of cruising the timber for assessment purposes by the counties had been agitated and dis-

cussed in Idaho for a considerable period of time. Prior to our letting the contract with Nease the four north counties of the state had held joint meetings to discuss it, one of these meetings was held at Moscow, two at Coeur d'Alene. One of the meetings at Coeur d'Alene was for commissioners and the other for assessors. Then there were two meetings at Boise and I think one at some other place, where the counties were represented and this issue was gone into. We had been well aware for some time that the assessor had no data by which he could place a value on timber lands. He did not know what there was and the county officers had been talking for a long time as to how we could get around that difficulty. When Mr. Malloy was assessor he had asked the timber companies to submit their cruises, and I think one of them did. We did not know any other way to meet the difficulty than by a cruise. So the five north counties went to looking it up to see how to cruise five counties. We first talked about cruising them all together and we saw that would not do and then we went into it by ourselves with the understanding that we would cruise three townships. Then we wrote letters to other counties to see what they had derived from cruising and they were all very satisfactory. I was deputy assessor in Clearwater county for three years and had been in the timber some and I knew of instances where claims that were worth more than a thousand dollars were assessed the same as claims worth five thousand. The assessor did not know what was on any of them and he just put on

a blanket assessment. The good claims and the poor claims paid taxes alike. It was a rank injustice. Moreover the timber companies were in the habit of submitting burns to the assessor and he did not know whether there was a burn there or not. We found by examination that they would place a burn on one place in one year and the next year would say that it was not burnt at all or that part of it burned so that we were well aware that there were burns claimed where there were no burns, and so a blanket assessment was an injustice to everybody.

There were pieces of land that were being farmed or meadows that were being assessed as timber where there was no timber on them at all. Before this contract was let a suit was brought by the Northern Pacific Railroad against the board of county commissioners to enjoin the collection of a tax because it was made by blanket assessment and not by direct examination of the timber. I was deputy assessor in Clearwater county after the Nease cruise was made. I used the Nease cruise in assessing tracts of land where there were small parts in cultivation upon timber claims. It showed in some cases that a man had very little or no timber and in some cases that they were farming amongst the trees and in some cases there were fields or pieces of land that had gone in as timber land under a blanket assessment. By this cruise it was segregated so that you could tell what it was. Clearwater county is in such shape that it was impossible for the assessor to go over it. There are meadows that the assessor never

heard of. I think it is impossible for him to go over the timbered area in Clearwater county. I took a copy of the report of the Nease cruise with me in my work as deputy assessor and I found that the work was very accurate in the segregation of these cultivated tracts among the timber claims. I used it for assessing around Wieppe and Lolo Brakes.

Mr. Zelenka and Mr. Torgerson when they went forth to make their investigation of Mr. Nease brought back letters with them for my inspection and I read them. I also wrote some letters of inquiry myself. I understand that the county commissioners of Latah county of this state and also Kootenai county and Bonner county also looked him up and were satisfied with him.

In the conversation which I had with Mr. Fohl about Mr. Portfors and Mr. Swanson he stated that he had employed these men and recommended them as being fit inasmuch as they had cruised for the Clearwater Timber Company and thought we ought to give the men in the county a chance to do the cruising. I did not tell the other commissioners about my talk with Mr. Fohl until after the contract had been let. Mr. Swanson did his talking about bidding with Mr. Zelenka, not with me. Mr. Portfors said he would like to know what we wanted and we told him we wanted to know what he had to offer in the way of a cruise for taxation purposes. We told him that we had Mr. Nease's plan under consideration and we should like to have their plan so that we could consider them. They said they did not have any plan.

Mr. Zelenka and Mr. Torgerson made an investigation as to the reliability and responsibility of Mr. Rankin and Mr. Hunt and made their report to me. I had some conversation personally with Mr. Rankin. Mr. Rankin submitted a bid, but after considering it and the information which we had in regard to Mr. Rankin we thought that we did not want to hire him. We considered that Mr. Hunt and Mr. Rankin were bidding together, one was to do the cruising and the other one to make the records. The best information that we could get in regard to Mr. Nease and his work in other counties was that he was all right to do the work and we considered his bid under all the circumstances the best bid.

The next day after the first contract with Nease was signed we went up to the office of the county attorney, Mr. Holsclaw and I told him that I had heard him say that the contract was not worth the paper it was written on and I said to him, "Here, man, you dictated that yourself, what about this," and he hemmed and hawed around and really didn't answer anything at all and we lost faith in him. We found we could not go to him at all, when he would dictate a contract and in less than 24 hours say it was not worth the paper it was written on. We had tried to follow his advice in letting the contract. We were all there together at the framing of the contract, making suggestions as to what it should contain. After the contract was signed we went on with our regular business and Mr. Nease prepared to go ahead with the cruise giving the legal time for the contract to

come into effect, and about the time it was to become effective we were enjoined from doing anything. After the injunction suit was filed we concluded that Mr. Holsclaw was not the man we wanted to represent us and we talked it over with him and concluded that we would have to employ some other attorney or attorneys and we employed Mr. Tannahill and Mr. Hodge to defend us in that case; then one day when Mr. Hodge was up at Orofino we submitted this first contract to him and he said he did not think it was worth very much and shortly after we called up Mr. Tannahill and asked him to come up and employed him to look after the cruising contract. He advised us that it would be better to cancel that contract and draw up a new one. The lawyer then prepared a new contract and it was read over to the board and we made suggestions. Mr. Zelenka was very insistent on one thing, that is, that there should be no subletting. It was read to the board and we all commented on it as it was read, and it was approved by all of the commissioners. The minutes of the board meeting at which the contract was allowed were read to the board and approved. There was no change made in the contract after it was signed nor any changes made in the minutes so far as I know. There was nothing wrong in the transaction that I know of. I acted on the best information I had and I am sure the rest of the board did the best they knew. The effect of the cruise was that it showed the tracts of land that had timber on them, where the most timber was, where there was no timber or sparse timber so

that the burden of taxation was placed where the value was. The burden was equalized over the county where it belonged.

Mr. Blake and Mr. Nease in talking to the board said that in some cases there were settlers upon public land and the books of the county did not show that a settler was there; that it was not proved up on but would be proved up in a short time and be ready for taxation and that it would be more expensive to go back and cruise such lands than to have Mr. Nease cruise it.

I had nothing to do with the bringing of the suit of John Lewis, nor with the dismissal of that suit.

As soon as the contract to Mr. Nease was let the board concluded that it should employ a checker to go out and check here and there to see whether Mr. Nease was giving us good work, so we employed a checker for that purpose to check promiscuously without letting Mr. Nease know where he was going to check. We employed Mr. J. F. Gorman for that purpose. He was deputy assessor and he made his reports to the assessor. The board had a report from the assessor on Mr. Gorman and Mr. Nease's work before we paid Mr. Nease's bills for his work. We inquired from time to time of the assessor how they were getting along and he reported that everything was checking out all right and that they were cruising the proper lands. The statement of Mr. Blake made to the board at the time of letting the first contract to Nease urging the board to prompt action was made in the afternoon after Mr. Portfors said that he did not want to make a bid.

Upon re-direct examination the witness Harrison testified as follows:

The commissioners and the assessor after talking the matter over thought it was proper to hire Mr. Gorman and the commissioners hired him. I think the board was in regular session at the time and I know of no reason why the matter should not be of record in the proceedings. Gorman was the deputy assessor appointed by the assessor. I think Mr. Gorman was in Spokane and was not living in Orofino at the time. I attended one meeting at Moscow and one at Coeur d'Alene and one at Boise about which I have already testified. Mr. Malloy was the assessor of Clearwater county at the time of the Clearwater meetings. Mr. Zelenka was at both the Coeur d'Alene and Moscow meetings. Mr. Nease was at Moscow. I don't remember the dates of those meetings but I should think they were about a year before our first contract with Nease. I met Mr. Nease at the Moscow meeting and at the Boise meeting and talked with him about timber cruising. He was not at that time interested in a contract with Clearwater county.

I did not personally check up Mr. Gorman's reports on Mr. Nease's work. My knowledge of his check was only from what the assessor reported. I do not know where Gorman's reports now are. Gorman had previously been employed by Clearwater county to check up burns. The commissioners also employed him to go over the Northern Pacific land when we thought we might have to defend against their refusal to pay their taxes. Mr. Gorman made his re-

ports on the railway lands to the assessor. The board of county commissioners passed on Mr. Gorman's bill for his work under the O. K. of the assessor.

In investigating Mr. Nease I wrote to a man by the name of Moore whose name was given to me by Mr. LaPoint at Boise. There were several persons who gave me addresses of men to whom I could write, and I wrote to them. Mr. Moore held some office either as commissioner or assessor of some county that had its timber cruised. With reference to the statement of Mr. Blake before the board at the meeting of February 24, I think he thought the board was out of patience. It was in the spring of the year and it was about time to start out assessing and if he used the cruise that year it was about time to start work and he did not want to fool around any longer.

On re-cross examination the witness Harrison testified as follows:

The Boise meeting to which I have referred was the meeting of the state board of equalization. I attended that meeting and we then had the result of the Nease cruise and we had one of the books of his reports there at the Boise meeting. The board of equalization was considering cutting our valuation on timber and we showed them that book to demonstrate that we actually knew what we were doing and that the state tax commission did not know what it was doing. There were five or six representatives of the timber companies there. One of these, Mr. Humiston, said that the work as far as they had

been able to check it they had found within twenty per cent. They had no complaint of the cruise, that the map work was admirable. That they had checked the cruise and found it satisfactory. Mr. Ramstead, of the state tax commission, said that he hoped the whole state was cruised and classified in all timbered counties along the lines we had followed. Our assessment of the timber under the Nease cruise was sustained by the state board of equalization.

On further re-direct examination the witness Harrison testified as follows:

I do not know who was back of the suit brought by John Lewis.

In answer to questions propounded to him by the court the witness Harrison testified as follows:

I think Mr. Gorman lived in Spokane. He was a deputy assessor during the time he was doing the checking of the Nease cruise. I could not say positively that he ever made any reports on Nease's cruise. I had only met him two or three times before we employed him. The other two members of the board and the assessor were well acquainted with him. He was their selection and I abided by it. They said he was all right and the assessor recommended him. I realized that we were responsible to the county for the disbursement of money but I left the matter to the assessor because I thought he was doing the best he could and would do what was right. I do not leave all matters to the county officers to determine. The assessor said that he personally knew Gorman, that he was a good

checker and a good cruiser and I was not acquainted with any cruisers myself and did not have any man to suggest. I did not see Mr. Gorman's reports when they came in, but allowed his bill on the recommendation of the assessor, as Gorman was a deputy assessor. I saw Nease's plats as they came in from time to time. We commissioners went up into the assessor's office and checked them over with the assessor or the clerk and the assessor O. K.d the check. Mr. Nease would read over what he had cruised and the assessor or his deputy would check in the plat book to see if the proper lands were being cruised. We found that the lands were proper lands. This checking was quite a task and I did not stay for it all the time. We were induced to cancel the original contract with Nease and enter into a new one because our attorney, Mr. Tannahill, advised us that the first contract was not properly drawn. I considered that the county as well as Mr. Nease was interested in having a proper contract. I had never had any experience in such affairs before. I do not think that the second contract was any more favorable to the county than the first one. I think our attorney told us that perhaps the meeting was not properly called and that some of the wording in the first contract was not proper or something to that effect. He just advised us after reading it that he did not believe the contract was what it ought to be and believed that we would probably be attacked on the contract and that we had better have a contract that was lawful—properly drawn up.

Upon further re-cross examination the witness Harrison testified as follows:

I think Mr. Gorman was a resident of Spokane at the time when we employed him. I think Mr. Blake said that he was in Spokane and he would write for him to come down.

The defendants by their counsel then offered in evidence Defendants' Exhibit Number 21, which is the complaint filed by John Lewis in the suit against Frank Zelenka and others. The plaintiff by its counsel objected to the same being received in evidence on the ground that the complaint offered in evidence was in a suit which was brought to cancel the first contract between the county and Mr. Nease; that the suit in which it was filed never passed to judgment and does not tend to prove any of the issues in the case on trial. The objection was overruled by the court and the exhibit was thereupon received in evidence and the court granted leave to substitute a copy thereof.

On further re-direct examination the witness Harrison testified as follows:

I read the complaint marked Defendants' Exhibit Number 21 before the second contract between Clearwater county and Mr. Nease was entered into.

The witness was excused.

The deposition of SAMSON SNYDER, taken at Orofino, Idaho, on the sixth day of May, 1916, as a witness for the defendant, was then read as follows:

I live at Orofino, Idaho, and am employed in the telephone business. I was present at the meeting of

the board of county commissioners of Clearwater county on February 24, 1914. The three commissioners were present, the clerk, the deputy clerk of the board, Mr. Portfors, Mr. Swanson, Mr. P. H. Blake, Mr. Nease and a number of others. The board was considering letting a contract for the cruising of the timber lands of Clearwater county and there was quite a discussion as to what the contract should be. Mr. Portfors and Mr. Swanson, who represented themselves as cruisers and estimators, were there for the purpose of making a bid on the cruising and were demanding from the board plans or specifications of what was required and the board stated that Mr. Nease had furnished his plans for doing this work and that if they wanted to do the work they could do likewise. Mr. Portfors asked how long a time they would give him to submit a bid and after some discussion Mr. Blake, the county assessor, got up and demanded that the board do something at once and not parley or postpone the matter any longer and said that if they refused or delayed the matter much longer he would take the matter in hand himself and have the timber cruised. There was some discussion as to the qualification of Mr. Swanson and Mr. Portfors, the principal objection being that they had both worked for the timber companies. Mr. Nease claimed to have a system of his own and that he had a copyright on his method. I heard Mr. Schreve's testimony about a scrap book containing newspaper clippings. Mr. Harrison asked me to get it from Mr. Schreve or the auditor and I got them and delivered

them to Mr. Harrison. That was after the meeting. I read most of the newspaper clippings and they were derogatory to Mr. Nease.

The witness was excused.

The deposition of ELLIS SMALL, taken at Orofino on May 6, 1916, as a witness on behalf of the defendants, was read as follows:

I am 54 years of age and live at Orofino; have had quite a lot of experience in the woods. I have been a compassman but I have not done very much cruising. The compassman does whatever the cruiser tells him. I acted as compassman during the cruising of the Schofield timber, tracts of about 10,000 acres on Washington creek in Idaho. I was working for the Lacey company, between times for the Clearwater Timber Company. There was a preliminary cruise made by going twice through the forties and a subsequent cruise was made. In making the subsequent cruises they had surveyors survey out each section and in cruising we passed through a forty-acre tract eight times. I kept track of elevations and when we came to a creek or a hill we wrote that down in a book and it was handed to the man who had to do the drawings. I was then working for Lacey and Company. I have also worked for the Clearwater Timber Company in estimating with the compass. Their work is about the same as Lacey and Company's preliminary work. They go twice through a forty. In working for Clearwater Timber Company I covered on an average of two or three forties. I double run all their work. From my experience in cruising tim-

ber in Clearwater county I think an average cruiser can cover about forty acres in a day. He could cruise using the double run method of the Clearwater Timber Company three or four forties and get accurate results.

On cross examination the witness Small testified as follows:

I have had no experience as compassman and cruiser except in working for J. D. Lacey and Company and the Clearwater Timber Company in Idaho. My experience as compassman in Idaho covers about four years. I think that Lacey and Company have a system of cruising that is different from that of any other timber company on the coast.

On re-direct examination the witness Small testified as follows:

I do not think that I have had an opportunity to observe cruisers and their methods.

Deposition of Theodore Fohl, taken at Orofino, on May 6, 1916, a witness on behalf of the defendants, was read as follows:

I live at Orofino, Idaho, and I am the agent of the Clearwater Timber Company and am a timber estimator. I have had experience as a timber estimator both in Idaho and Michigan covering a period off and on of twenty years. I have cruised timber in Clearwater county to considerable amount for the Clearwater Timber Company. I am familiar with the timber in Clearwater county, especially in townships 44, 45 and 46; also in township 39 north, range three east; ranges three, four and five east, and town-

ship 38 in ranges four and five east and other townships. I am generally familiar with timber in Clearwater county. There are all kinds of timber lands in the county, level, rolling and mountainous. The heavy underbrush is one of the obstacles that a cruiser has to contend with. I cover in cruising from four to sixteen forty-acre tracts in a day. The difference is caused by the brush and mountain sides and sometimes the heavy stand of timber prevents one going as fast as he otherwise would. I have cruised sixteen forty-acre tracts in a day of yellow pine on Potlatch creek. It is near the county line. I don't know whether it is in this county or not. It is not far from the county line. In some kinds of timber in township 39 north, range five east, and in township 36 north, range five east, I can cover six forties in a day. My method is to pass through a forty four times if I am particular and twice if I am not very particular. The usual custom in this country is to double run in cruising. In my judgment a complete, accurate and thorough estimate of timber can be arrived at by a single run in this county where the timber is uniform over the whole section. There are burns however and it is not customary. In my judgment a single run cruise is not sufficiently accurate and thorough for any purpose. I have employed timber cruisers and my instructions to a cruiser are to use any method so long as he gets all the timber. They are supposed to run twice. It is necessary to go more than once through standing green timber.

On cross examination the witness Fohl testified as follows:

A single run is good when the timber is uniform. My instructions to a cruiser are to get all of the timber and I leave it to him to use his own method. Some of them cover more ground than others. It is customary for timber cruisers to use their own judgment as to whether it is necessary to go through the timber with a double or a single run. Where timber has been burned and you have been on all sides of a forty it would not be necessary to go through it more than once. I have never had any instructions such as are contained in the written instructions given by Mr. Nease to his cruisers and I don't know how many forties I could cruise in a day under such instructions. I couldn't do more than six forties a day. You would have to go through the land twice in order to get the information called for by those instructions as to the soil and mineral conditions. By complying with those instructions it would reduce the number of acres a man could do in a day, but I think I could do about six forties but I never tried it.

On further re-cross examination the witness Fohl testified as follows:

If a cruiser had experience in following those instructions it would facilitate his work. A cruiser in going into a forty could observe those instructions and make a pretty fair estimate of the amount of timber on a forty and the elevations if he had been on the adjoining land, but if he had not been on the adjoining land he could not do it in a single run. If he

had been on the adjoining forties and making a run north and south and then goes through east and west and finds there is no difference in the character of lands he can just about judge what it is. It is necessary to have a cruise of timber lands in order to arrive at any intelligent idea of the amount of timber on them.

JOHN LEWIS, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

I live at Ahsahka, Clearwater County, Idaho. I have heard the testimony given in court about the suit of John Lewis against the Board of County Commissioners of Clearwater county to restrain the board from further proceeding under a contract with Mr. Nease. I am the John Lewis who signed the complaint in that action. Theodore Fohl, who was the agent for the Clearwater Timber Company, approached me about bringing that suit and said that he thought the price of the Nease contract was too high and that the timber ought to be cruised for eight or nine cents per acre. We talked over the matter of bringing the suit and he said that if I would take the matter up he would help pay the expenses. We talked over the matter of attorneys and we finally decided to get Mr. Babb. Mr. Fohl wrote him a letter that evening and he came up to Orofino. Mr. Babb has never rendered me any bill on account of the litigation in that suit. At the time that suit was brought I owned about 300 acres of timber land in Clearwater county which was then assessed at about \$3,-

000. About the latter part of June or the first part of July I was notified that my assessment had been raised to \$10,000. That was about two months after I filed this suit.

On cross examination the witness Lewis testified as follows:

I do not know Mr. M. G. Nease and never had any conversation or correspondence with him. I had nothing to do with the institution of the suit which was brought in my name nor with the dismissal of it. The suit was dismissed because we decided that the people of Clearwater county were making quite a fuss in their election and that it would cost the county as much one way as another. Mr. Fohl stated that the people wanted a cruise and they might just as well have it then as any other time. So we decided to withdraw the suit. The suit was instituted at Mr. Fohl's request. He consulted me before it was dismissed. At the time my timber claim was assessed at \$10,000 I would have sold it for half of that. I made an application to have the assessment reduced but it was not reduced. I know Mr. Frank Harrison who is one of the county commissioners of Clearwater county in 1914. He had nothing to do with soliciting me to bring the above mentioned suit nor to have it dismissed. Neither did Mr. Frank Zelenka or Mr. Torgerson, the other two commissioners, have anything to do with the institution or the dismissal of that suit.

I had another suit in regard to this matter, which was an appeal from the action of the board of county

commissioners in granting the second contract to Mr. Nease. Mr. Babb got me to do that. Mr. Babb had never acted as my attorney in any other case except the one about which I have testified. I hired him in the appeal case, but he has not rendered me any bill for services and I do not know that I expect him to. Neither Mr. Harrison, nor Mr. Zelenka, nor Torger-son had anything to do with the institution of that appeal nor with the procuring of the dismissal of it. The reasons of dismissing the appeal were just the same as the reasons for dismissing the other suit.

On re-direct examination the witness Lewis testified:

Mr. Babb called me from Lewiston about the instituting of the appeal and I went to Lewiston to see him and no one went with me. Neither Mr. Nease nor Mr. Fohl nor any one interested in the suits with me told me that an agreement had been reached or that there had been any conference between the timber companies and Mr. Nease at Spokane.

The witness was excused.

JOHN P. HARLAN, being produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

I live at Orofino, Idaho, and have lived in Clear-water county for 14 years and am now chairman of the board of county commissioners of that county. I was in the county in the spring and summer of 1914 and was there when the contract between the county and Mr. Nease for cruising the timber was let. I and quite a number of other residents of Orofino were op-

posed to letting the contract as it was. I advocated letting the contract through competitive bids and we were thinking of appealing from the action of the board but it was not necessary for us to bring any action because Mr. Lewis had already taken action in the matter. I consulted Mr. Holsclaw and tried to argue with him that it was a very wrong move to let a contract without submitting it to competitive bids.

The witness was excused.

JOHN C. MURRAY, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

I am 69 years of age, live at Portland, Oregon, and gave my deposition in this action at Portland, Oregon, about a week ago. I began to work for Mr. Nease as a cruiser on the first day of April, 1914, at Elk River, Idaho. I was to have charge of a crew of cruisers. I worked about ten or twelve days in the spring and in addition to that I checked over cruising of the men of my crew. There were five men in my crew. I had no compassman with me in the spring. Mr. Grabow was with me most of the time and ran the compass. I had a compassman of another crew with me two days. In checking up the work of the other men in many cases I went with the crew of cruisers that I checked. Other times I went with Mr. Gorman and his compassman. Mr. Gorman was the county checker. In doing my cruising in the spring I double run all except about 300 acres. That was practically all brush. I averaged in the spring cruise about 240 acres a day. I quit the spring

cruising about the middle of June and began work again about the first of August. I started in then in township 39 north, range five east, with W. H. Harrison as compassman. I double run for about two weeks or more and double run some all the way through, but I double run only occasionally after the first two weeks. A man by the name of Duncan packed to our camp frequently and he asked me if I was double or single running and I told him I was double running. He said that Mr. Nease said that I was to use my own judgment as to how I should cruise the timber, if it was necessary to double run it. I took it for granted that my instructions would be to double run it and if a single run was sufficient I should single run it. That was my understanding. After Mr. Duncan left I double run where the timber was heaviest and where it was spotted; that is, where there were some patches of good timber and then open tracts and burns, and where the timber was not uniform I double run quite a little. I was out cruising 86 days in the fall. I probably cruised about 25,000 acres. The 86 days is the period that elapsed from the time I left White Meadows and began cruising until I got back to Elk River. I lost probably six days of that in moving camp. In the fall I cruised in township 39 north, range five east; 39 north, range four east, and 39 north, range two east. The ground in township 39 north, range five east, was fairly smooth; 39-4 was pretty rough; part of 39-2 was rough, but where I did most of my work I would call it smooth. In doing my checking I double run all of

it except one 80 acres, which I single run. The cruisers were double running it and I tried to run it the same way they did it. The estimates of ordinary competent cruisers of the amount of timber on individual forty acre tracts will vary very much, frequently as much as fifty per cent or more. I came to Moscow on this trip at Mr. Nease's request. I do not have my field books with me. Mr. Snyder was acting as compassman for me on the seventh of June, 1914. We were working in township 39-5 in the early part of June but I am not sure that we were there on the seventh. I checked in connection with Mr. Gorman some of the work of Mr. Bennison in township 39 north, range three east. We did not check out very close. In one eighty acre tract I think there was scarcely any difference and in the other eighty is was somewhat different. I heard Mr. Nease tell Mr. Fulton in Lewiston to raise Mr. Bennison's estimate a certain per cent. I could not say the exact amount, either thirty or forty per cent. The estimates in black figures on Mr. Bennison's field report of section eight in township 39 north, range three east, are not my figures and I do not know whose they are.

The witness was then excused to be recalled later.

M. G. NEASE, upon being recalled as a witness on behalf of the defendants, testified as follows:

I think I have here in court the documents and papers that I was asked to produce when last upon the witness stand. The brown coloring on the plat of township 38 north, range seven east, indicates government land. On this plat is written the following:

"Cruise all surveyed lands shown in blank, but none marked red. Of the lands marked in brown, cruise those in sections 27, 29, 32, 33 and 34." The writing on this plat up here is not mine. That down here is my writing. At the time of writing on the plat I had no information as to the status of the 320 acres of land indicated in brown in sections 27, 29, 32, 33 and 34, being the northeast quarter of the southwest quarter of 27, the northwest of the southwest and the southwest of the southeast of 29; the northeast of the northwest of 32; the north half of the southwest of 33; the southwest of the northwest of 34; the southeast of the southwest of 34, except as shown by the county records. The government lands that were cruised by us were scattered, small units, mixed in the patented lands. The county commissioners of Clearwater county requested me to cruise those small individual forties and eighties, up to a quarter section. These instructions were given verbally, when we were all discussing it in a general way. They wanted me to cruise those lands because they expected them to pass to patent and it would be more economical to cruise them then than to have separate cruises of them made at a later date, on account of their being so badly scattered. I made up these plats from the county records. I wrote similar instructions on all of the other plats before giving them to the cruisers. Defendants then offered and there was received in evidence Defendants' Exhibit No. 23, which is a plat of township 38 N. R. 7 east. The government lands are not always indicated by the same col-

oring, some plats using different colors from the others. The plat of township 38-3 east was prepared from different sources of information. The lands marked in green, comprising sections one to eleven inclusive and 15 to 18 inclusive, were arbitrarily designated by the county commissioners for me to cruise. The other parts of that township were cruised at a later date according to checking sent to me by the county assessor in response to my request by mail. I was frequently in Orofino while the cruising was being done. Upon another plat of township 38-3 east, which is now shown me, the lands along the river through sections twelve, thirteen, fourteen, 22, 23, 28, 29 and 30 are designated as power sites or state lands. I presume that I have seen this plat before. The lands designated thereon as power sites and state lands were not so designated on my plat of that township because I received from the officials of Clearwater county the information which I put upon it. The fact that the lands marked "Weierhauser Power Site," are not crossed out in red indicates that they are patented lands. I received the plat of this township from the county assessor P. H. Blake in answer to a letter that I wrote to him on April 24. The territory which I was to cruise was designated by another letter from the board of county commissioners signed by Joseph Kauffman, clerk. I entered into the contract with Clearwater county under which the plaintiff is claiming payment in this suit on April 15, 1914. The letter just referred to from the board of county commissioners is dated prior to that. On the

plat of township 38-3 east the red crosses indicate state lands. I have not the letter which accompanied this plat when it was transmitted to me. State lands were indicated by a red cross on the plats submitted to me by the assessor.

Defendants by their counsel thereupon offered and there was received in evidence Defendants' Exhibit Number 24, which is a blue print plat of Township 38 north, range three, east, which was identified by the witness as being the plat which was sent to him in response to his letter of April 24, 1914.

Thereupon the court adjourned until 9:30 A. M. on May 11, 1916.

The court reconvened at 9:30 A. M. Thursday, May 11, 1916, and the witness M. G. Nease, continuing, testified as follows:

None of my employes except Mr. Fulton had had access to the field reports including the field report on section 8, township 38-6 east since they were examined by defendants' counsel in my office last week. I heard Mr. Wherry's testimony to the effect that state land was indicated in his field report opposite the sub-divisions northeast of the northwest and northwest of the southwest of that section. There was no occasion for him putting anything on the margin of his report and I have no recollection of it. There was no occasion for his cruising state land and he was not told to cruise any state land.

I have everything in court from my office that is material pertaining to the cruise of Clearwater county. I do not know who owns the northeast quarter of section nine, township 39 north, range three east.

The lead pencil figures "H 990" opposite the northeast quarter indicates 990,000 feet, which some one else told me was on that land at the time when we were comparing our figures with the figures of the Clearwater Timber Company, Potlatch Lumber Company, Milwaukee Land Company, Northern Pacific Railway Company, and I think two or three other owners of timber land. The letter "H" may stand for Humiston, but I do not know. I made the figures myself. I have never known whether the Potlatch Lumber Company owned that land. The figures "H 935" on the report on section six and the northwest quarter are probably figures given to me by Mr. Humiston. There were figures submitted for comparison by several timber owners. Those figures indicate somebody's figures for 935,000 feet there against our 1,550,000. The figures in lead pencil, "C 755," opposite the southeast quarter on the report for section nine, may indicate the figures of the Clearwater Timber Company or of some cruiser of the amount of timber on that land. I think I used the letter "B" to indicate Nat. Brown and some of his estimates and the letter "M" for the Milwaukee Land Company.

Referring to the report of section ten in the same township, the figures "M 1260" on the left margin opposite the northeast quarter indicates the number of feet that whoever gave me those figures said there was there, and I am not positive that was done by the Milwaukee Land Company. Referring to field report on section 12 in township 39 north, range three

east, the figures "C 2495" opposite the northwest quarter indicate somebody's estimate of the timber on nine sub-divisions, and not alone on the northwest quarter as against 745,000 found by us. These lead pencil figures on the field report are merely check figures for comparison. We reported our own figures only to the county, and in no case were figures that were submitted for comparison by any owner of timber returned by us to the county. The figures in the margin opposite the southeast of the northwest upon the report of section 20 in the same township would indicate that somebody's figures were 225,000 feet of white pine where we had found none; but there are so many marks in the margin that I would not be positive that the figures apply to that land.

Thereupon the plaintiff admitted in open court that, in order to save time, that after the witness Nease had completed his cruise he compared his estimates with the estimates of any timber company who desired so to do including Clearwater Timber Company, Potlatch Lumber Company and Northern Pacific Railway Company.

Thereupon there was identified by the witness and offered by the defendants' counsel and received in evidence Defendants Exhibit Number 25, which was a telegram from M. G. Nease to A. W. Laird, dated September 8, 1914.

Proceeding the witness stated:

This telegram refers to the Lewis litigation.

Thereupon the witness identified and there was introduced by the defendants' counsel and received in

evidence Defendants' Exhibit Number 26, which is a telegram from A. W. Laird, manager of the Potlatch Lumber Company, to M. G. Nease, dated September 8, 1914.

There was then identified by the witness and offered by the defendants' counsel and received in evidence, Defendants' Exhibit No. 27, which is a letter from W. D. Humiston to the Nease Timber Company, dated July 21, 1914.

There was then identified by the witness, offered by the defendants' counsel and received in evidence Defendants' Exhibit Number 28, which is a telegram from W. D. Humiston to M. G. Nease dated May 10, 1914.

There was then offered by the defendants' counsel and received in evidence Defendants' Exhibit Number 29, which is a telegram from M. G. Nease to Potlatch Lumber Company, dated April 3, 1914.

There was then offered by defendants' counsel and received in evidence Defendants' Exhibit Number 30, being a telegram from M. G. Nease to W. D. Humiston, dated October 27, 1914.

The defendants also offered and there was received in evidence Defendants' Exhibit Number 31, which is a telegram from M. G. Nease to W. D. Humiston, dated October 28, 1914.

Continuing his testimony, the witness Nease testified as follows:

The occasion for my asking in defendants' Exhibit Number 31 Mr. Humiston to call on the president of the Empire National Bank and assure him of the le-

gality of the cruising warrants was that I had sold some of the cruising warrants to the Empire National Bank and Mr. Airhart, the president of the bank, had told me that he had been informed that the timber companies were going to start some new litigation over the warrants that I had sold to him.

There was then offered by the defendants and received in evidence Defendants' Exhibit Number 32, which is a warrant of Clearwater county which the witness stated was one of the warrants which he had sold to the Empire National Bank.

Thereupon the examination of the witness by the defendants' counsel proceeded as follows:

Question: Have you prepared any statement with reference to the cost of this cruise?

Answer: Some.

Question: Will you produce it?

Thereupon the plaintiff objected to the question and to the reception of any evidence of the cost of the cruise to the witness Nease on the ground that such cost was irrelevant and immaterial to any of the issues of the case and would not in any way tend to prove what was a reasonable contract price for the work even if the court should hold that the reasonableness of the contract price was a matter for the court to go into under the issues of this case. Thereupon the objection was overruled.

The witness then produced a statement of the amounts paid by him to his cruisers and compassmen when employed in the work of cruising for the defendant county and the defendants' counsel then offered the same in evidence.

Thereupon the plaintiff by its counsel objected to the reception of said statement in evidence upon the ground that the same did not tend to prove any of the issues in the case, did not tend to prove whether the contract was entered into in good faith, or whether the contract price was so exorbitant as to show bad faith, and did not tend to show what was a fair contract price for the work. Thereupon the court over-ruled the plaintiff's objections and the said statement was received in evidence and marked Defendants' Exhibit Number 33.

Thereupon counsel for the defendants propounded the following question to the witness:

How much did these books cost you, these covers alone?

Thereupon the court ruled at the request of the plaintiff that the plaintiff's objections already made would be understood as urged to all inquiry in regard to the cost of the work.

Continuing, the witness then answered the question as follows:

I think about Twenty-four or Twenty-five Dollars apiece, or Twenty-six Dollars, somewhere along there. I don't remember.

Continuing, the witness testified, in response to questions propounded to him by counsel for the defendants, as follows:

There were five or six of these books. There are 205 sheets in book No. 1; 174 in the second book; 195 in the third and 195 in the fourth and 176 in the fifth. These sheets cost me \$260 a thousand. I do

not know how much the office work in making up these reports cost. I paid some of my men by the day and some by the month. I do not remember now all of the men I employed. I had a man by the name of Grabow, but I do not remember how long he worked for me, and I do not know how long it took the men to write up one of these reports. I had a good many people working on them. I do not know how much the provisions cost me for the men in the woods. I kept an account of some of the cost of this cruise, but not all. A great deal of it I paid out in cash out of my pocket. I do not know what the expense of the men in the woods was per day per man. I sold practically \$19,000 of the warrants I received for this work to the Empire National Bank. I could not say how much more than this I needed to cover the expense of this work, but the expense was vastly in excess of that. My work in Idaho included Latah, Clearwater and Boise counties and the profits on the three counties, according to the books and records which we have, I think amount to about \$32,000.00. I myself could not segregate them. There should be deducted from that various disbursements of my own, that is, I mean out of my pocket in cash. There is no one interested in the business but myself and I have not figured up those expenditures. I keep an account with each one of the cruisers. I paid car fare for some of these men from Portland, but I do not know how much it amounted to. I would say that my total outlay for car fare would be nearer \$5,000 than \$500.00. In addition to the wages of the compassmen and cruis-

ers, their board and expenses, their care fare and expenses to and from the work, cost of making the reports and general office work, there is the cost of moving camps and legal expense. I have had contracts for county cruises before the contract with Clearwater county. The only case that I had in court involving the contract was in Clatsop county, Oregon. Mr. Zelenka and Mr. Torgerson wanted a provision in the contract against sub-letting. I have sub-let some cruising in Clatsop county, Oregon, at four cents. The work of actual cruising in the field is about half the total expense. My own time and the cost of getting around and maintaining an office amounts to something. The first talk I had with anyone about cruising for Clearwater county was at a convention in Moscow in October, 1913. There were county commissioners and assessors from various counties from the north part of the state assembled there for the purpose of discussing timber taxation and timber cruising. At that time I discussed the matter with all the commissioners from all the counties and assessors who were there. I first met Mr. P. H. Blake at Coeur d'Alene City in 1914, I think in the early part of February. Mr. Zelenka and Mr. Harrison were at the Moscow meeting. There was no discussion about this particular contract, but I did talk to them about a contract for cruising Clearwater county as I did with others.

My men would work continuously in Clearwater county from the time they started in April. They knocked off about, I think, the 16th of June. The

work was discontinued largely for financial reasons. The filing of the Lewis suit did not have anything to do with it. The death of an uncle had something to do with financing the job. My men returned to work approximately the first of August. I had then no definite information about the dismissal of the suit. The timber companies interested in Clearwater county had said to me that all they wanted was a square deal. That they had no objections to the county being cruised and that if they got a square deal and a fair estimate that they had no occasion for continuing the litigation at a large expense to themselves and to others, and to the county perhaps. I had no assurances when my men returned to work in the fall that the suit would be dismissed and no information about it except as I have just stated. I had conferences with Mr. Humiston and representatives of the Potlatch and Clearwater Timber companies in Spokane and in Portland and in Lewiston and on the train and the suit was generally discussed. I think I first talked to them about it in June. There was no agreement to dismiss it entered into. There was no reason why there should be an agreement. They stated some time along in the summer that they were going to dismiss the suit. I don't remember just when. They did not do it. We attempted to have it tried, to get it set down and could not do it. Finally it was set down for trial. We did not want to get caught without knowing about it and we wanted to know whether it was going to be dismissed or whether it was going to trial upon the day set. I had no agreement with them.

Nothing more than their statement that the suit was to be dismissed. In my telegram of September 8, where I say "case has not been dismissed as agreed at Spokane conference," I might have misused the word agreed. As I have stated, at the various conferences held in Spokane and other places, discussing the cruise, the burden of what the timber companies said was that if they get a fair cruise they had no quarrel. Mr. Laird said he thought it good business for the county to take an inventory of its taxable property. At the first conference they stated that the reason they filed the suit was because they heard from Oregon that I cruised excessively high. That they heard that I told the men to go out and smash the timber men. That I was a sort of a socialist and anarchist, and down on the timber men. I told them I was not that kind of a man and that we had no ownership maps to guide us and that I could not tell who owned a quarter section. I paid no attention to who owned the land. My plats don't show any ownership whatever. I have here some correspondence with the board of county commissioners of Clearwater county. Referring to field report of section 28 in township 39-3 east, the figures in the margin indicate some one else's estimate for comparison with mine on white pine. There is an arbitration clause in my contract with the county to the effect that if there is a dispute between the owners of timber and myself that the dispute should be settled by a re-cruise by an arbitrator selected by the board of county commissioners and myself. This checking presum-

ably was for the purpose of determining the variations. I think we compared estimates with the Clearwater Timber Company on approximately 49,000 acres. The purpose of these comparisons was to see how close we ran together and to see if they desired to take advantage of the arbitration clause in the contract, or to have a re-cruise in some manner. We ran a little under them in white pine and a little over them in other timber and a little over them on totals. When there was great discrepancies, as, for instance, where my estimate was 450,000 of white pine on the southwest of the northeast of 28, where theirs was 900,000, they stated that that was one of Nat Brown's cruises when Nat was soaking them.

Defendant then offered and there was received in evidence Defendants' Exhibit Number 34, which is a statement of the ownership by the Potlatch Lumber Company of certain lands in section 28, township 39 north, range three east.

On cross examination the witness Nease testified as follows:

I have been in the business of cruising for ten or eleven years and have done cruising for counties in the states of Oregon, Washington and Idaho. I have done cruising for Clackamas, Columbia, Clatsop, Multnomah and Washington counties in the State of Oregon, and Kittitas and Cowlitz counties of the State of Washington, Latah, Clearwater and Boise counties in the State of Idaho, and I now have a contract for the cruising of Elmore county, Idaho, and Malheur county, Oregon. The cruising which I did in these

various counties was all done under contract with the several counties. I cruised for Latah county, Idaho, in 1914, under a contract which fixed the price at 12½ cents per acre. This was also the contract price for the cruising I did in Boise county, Idaho, and in Clatsop county, Oregon. The contract price in Columbia county, Oregon, was six cents. That cruise was merely a recognizance and segregation of the farm lands from the burnt over and rough lands. The contract price in Clackamas county was eight or nine cents. I have forgotten which. The cruise by me in Clackamas county comprised approximately 600,000 acres and approximately three-fourths of the amount was largely farm lands with just a piece of timber here and there and all very accessible. My contract price for cruising lands in Kittitas county, Washington, was a lump sum and not per acre. The cruising I did for Cowlitz county, Washington, was under a sub-contract. I cruised only two or three townships in that county, as a subcontractor, at nine cents. I know what is the usual price charged by competent cruising companies in the northwest for the cruising of timber lands. It ranges from sixteen cents up to as high as \$1.50 an acre depending upon the fullness of the report, the cruising systems employed, that is; as to whether it is a two, four, or eight-time run, or a tree count, and all such things, and the topographic work. None of the figures or estimates of the cruises done by my men in the cruise for Clearwater county were changed because of any comparison made between those figures and the figures of the owners of

the land. The comparisons which I made between my cruise and the estimates of the Clearwater Timber Company, Potlatch Lumber Company, and the Northern Pacific Railway Company and the Milwaukee Land Company were made some at Lewiston and some at Spokane, but those from which I placed the memoranda in the margin of field reports about which I have testified were made at Portland on November 1, 2nd and 3rd, 1914. My cruise had been absolutely completed by that time and my estimates were not thereafter changed in any particular whatever. Whenever a large discrepancy occurred between my figures and those of Mr. Farnum, he would invariably explain it by saying that that was one of Nat Brown's cruises when he was soaking them—because he raised the estimates on the white pine only. I know nothing about Nat Brown's cruise. We compared estimates with the Clearwater Timber Company on approximately 49,000 acres. We ran between twelve and 15 per cent lower than their estimates on the white pine. We ran over them about ten per cent on mixed timber, meaning white fir, red fir, etc. The total difference, as I remember it, was 4.1 per cent. Whether we were over them that amount or under them I do not remember. Our estimates were very close to the figures of the Northern Pacific Railway Company and I do not remember the percentage of this. We were somewhat under the totals of the Milwaukee Land Company's figures, but approximately three times as high on some sections. I do not know why we over-run them so much on those

sections. Our estimates very closely approximated the figures of the Potlatch Lumber Company. On some individual tracts there was very wide variations, as high as 150 per cent, but as a rule the difference was around 15 or 20 per cent. The meeting at Spokane came about in the following way:

I was down to Orofino the latter part of April, and on the way out I met Mr. Laird and Mr. Humiston and Ben Bush. I had never seen or met Mr. Laird or Mr. Humiston before. And Mr. Humiston introduced himself to me, I think; I am not clear as to whether we were introduced by someone else or whether he just knew who I was and came over and sat down. And he wanted to know how we were getting along with the cruise, and discussed things in general along those lines, and I began to banter him a little bit, and asked him what the dickens he meant by bringing a law suit and trying to put a poor timber cruiser out of business, and we bantered around a little, and finally I said: "Speaking seriously, what do you expect to gain by bringing this suit?" And he said: "We expect to stop this cruise." And I says: "Why do you want to stop this cruise? Are you afraid of the light? Are you afraid to have the light thrown on your dealings up in Clearwater county?" And he said, "No, we do not object, and would not object to a fair cruise." "Well," I says, "I have no facilities for making any other kind of a cruise, and we want to be fair with everybody." And the discussion went along those lines for some time, and he says: "Well, have you completed any of your

work?" And I says, "Yes, mostly in Latah county, however," and he says, "Would you be willing to compare estimates with us?" And I said, "Why, certainly, I would be glad to compare estimates with you at any time," and he said, "When I get back I will get some of my estimates together and meet you at some convenient place." We had our headquarters at Lewiston at the time. And he said, "We will check up some of this work." And later on I received this wire from him, and I think he came to Lewiston,—I am right positive he came to Lewiston, and we checked up some estimates of his with mine, and they ran quite close together. And he says, "Are you doing the same kind of work all over the country here?" And I says, "We are doing the same kind of work." And he asked me something about the character of the men we had in the field, and one thing and another, and he said, "You know litigation is expensive to us as well as it is to you, and our only object in bringing this litigation, our only reason for bringing this litigation was because we wanted to stop this thing, fearing an excessive cruise. The reports we have upon you from Oregon are to the effect that you have believed in stinging the timber companies, that you have socialistic ideas about the assessment of timber lands, you think that because the timber land is owned by a non-resident corporation they ought to be held up." I said, "We don't want to know who owns the land we cruise; we don't know. We have no maps to distinguish who owns it. And at any time that any of the timber owners, corporations or individuals,

have any grievance, we will be very glad to adjust them by a recruise by an arbitrator or a joint recruise." He says, "The rest of the holders of timber in Clearwater county are under the same impression that I have." He says, "It might be advisable for you to meet them, if you wouldn't be afraid to meet them." I says, "I have no fear of meeting them at all." I said, "I would very much like to meet all parties interested in this litigation and discuss this cruising question, and discuss it all, because litigation is expensive and very disagreeable and unpleasant." So at a later date I received a wire from Mr. Humiston,—I am not sure about that wire, but anyway it is immaterial. I went to Spokane and met representatives of corporations and owners, lawyers, I think, a bunch of them anyhow, and at that time we compared some estimates and discussed the proposition, and there was not a single man there who asked me if I would lower my cruise or favor him, or attempted to coerce me in any way, shape or form in regard to this litigation. They all were of the same mind, according to their expressions, that they only wanted a square deal, and did not oppose the cruise. From time to time after that, perhaps two or three other times, I met some of those same men, one or more, at different places, met them on the road, met them in Lewiston or Orofino, different places. "How are you coming along with the cruise," they would ask. "Everything going along nice?" "When are you going to dismiss the suit?" When are you going to do this, when are you going to do that? During all of this

time, however, we were endeavoring to have that suit set down for trial, wanted to try it out, but they opposed it and asked for postponements from time to time, up to the time when it was finally set down, I believe, for some date in the early part of October, and still there was no dismissal, and that was the reason for the wire that I sent to Mr. Laird. They had said that they were going to dismiss the suit. I still contend that there was no agreement. There was nothing for us to agree on. They said they were going to dismiss the suit, and at that time it was getting close to the date for which the hearing was set, and we naturally wanted to know whether it was going to be dismissed or whether we had to go ahead and prepare our case. Then the case was dismissed. I received a wire from Mr. Farnum, I believe, stating that the dismissal had gone forward, and later on I received word that it had been dismissed, about the 13th or 14th of October. This meeting, when all these figures were put here, was later on, in November, either the first, second or third day of November. All the correspondence pertaining to this cruise, with the officers of Clearwater county, all the correspondence relating to this cruise, with the timber companies, is here; everything pertaining to this cruise, so far as that part of it is concerned, is here, and it was offered to Clearwater county's attorney in October, 1915.

The witness then identified and there was offered by the plaintiff and received in evidence Plaintiff's Exhibit Number 16, which is a letter from the county

commissioners of Clearwater county to the witness M. G. Nease.

Continuing, the witness testified:

The lands referred to in Plaintiff's Exhibit Number 16 did not include the lands shown upon the Defendants' Exhibit Number 24 and marked "Weierhauser Power Site." I did not instruct any of my cruisers to cruise any of the state lands. If any of the state lands were cruised in the work it was through error. There might have been some state lands marked on the plats which guided the men in the field, showing them to be patented lands. There might have been some few pieces of state lands cruised by mistake of the cruisers. But whatever state lands we cruised, with the exception of five or six hundred acres showed on my plats as being other than state lands. It was not my intention to cruise any nontaxable state lands, and when I speak of state lands I mean nontaxable state lands. There were some lands cruised by me which did not appear by the records of Clearwater county to have been patented. I was told by the board of county commissioners to cruise government lands, as for instance, where there would be a 40 or an 80 or 120 acre tract of government land in a section which we were cruising, I was told to include that in the cruise if it was similar as far as the stand of timber was concerned to the surrounding patented lands in the same section, the idea being that those lands either had been entered or had some sort of scrip filing, or would in the near future pass

to patent, and it would then be more expensive to go back and cruise them separately. They did not designate to me specifically what government land I should cruise. The warrants which I sold to the Empire National Bank were the first warrants which were issued to me by Clearwater county for work done by me under my contract, and they represented 80 per cent of the amount earned upon the bills for which they were issued and were issued upon the first two bills which I filed with the county commissioners, being Plaintiff's Exhibit Number Six and Plaintiff's Exhibit Number Seven.

Thereupon it was admitted by counsel for both sides that the above mentioned warrants had been paid.

Continuing, the witness testified as follows:

R. E. Fulton is my bookkeeper and has been such for the past seven or eight years. He is here in court. I cannot give definite evidence as to the cost of my work for Clearwater county because we carry our operating expenses, overhead and all, by the year and not by the job. Our books have in them all of the Idaho business. Mr. Fulton can strike off whatever the books show, but he cannot absolutely segregate the cost of the several jobs because that is impossible. My books are here.

The witness then identified and the plaintiff offered and there was then received in evidence Plaintiff's Exhibit Number 17, which was a letter from Frank Zelenka, dated March 13, 1914, addressed to the witness at Portland, Oregon.

Continuing, the witness testified as follows:

Upon receipt of Mr. Zelenka's letter I wrote both to Mr. Harrison and Mr. Zelenka, under date of March 27, 1914.

The witness then identified each of said letters and they were then offered by the plaintiff and received in evidence and marked Plaintiffs' Exhibits Numbers 18 and 19 respectively.

The witness then identified and the plaintiff offered and there was received in evidence Plaintiff's Exhibit Number 20, which is a telegram from the witness M. G. Nease to P. H. Blake, county assessor, dated March 19, 1914.

The witness then identified and the plaintiff offered and there was received in evidence Plaintiff's Exhibit Number 21, which is a telegram from the witness Nease to Frank Harrison, dated at Portland, Oregon, April 3, 1914.

The witness then identified a letter addressed to him under date of March 22, 1914, by P. H. Blake, assessor, in answer to the witness's telegram of March 19, 1914, being Plaintiff's Exhibit Number 20. The above letter was then offered by the plaintiff and received in evidence and marked Plaintiff's Exhibit 22.

There was then offered by the plaintiff and received in evidence Plaintiff's Exhibit Number 23, which is a telegram from the witness to P. H. Blake from Portland, Oregon, dated April 3, 1914. The plaintiff then offered and there was received in evidence Plaintiff's Exhibit Number 24, which is a tele-

gram from the Potlatch Lumber Company to the witness Nease, dated April 22, 1914.

Continuing, the witness testified as follows:

My telegram of April 3, 1914, which is already in evidence as Defendants' Exhibit 21, was in answer to the telegram from the Potlatch Lumber Company dated April 2, 1914, and marked Plaintiff's Exhibit Number 24. I came along with my party and we arrived at Bovill in the afternoon of the fifth or sixth of April. My cruisers and compassmen were there and the county commissioners of Latah county, and I think one of the professors of the forestry school of the University of Idaho, but I am not so positive as to him. None of the Clearwater county officials came. We were met by Mr. Jones, the superintendent of the logging operations of the Potlatch Lumber Company and went out on one of their logging trains into the woods and spent a day there going over their logging works, scaling timber and getting a line on breakage and defects, giving the men a chance to brush up on such matters. The object in having the county officials along was to let them see what kind of men I had. Referring to the cruiser Morrow's field report on section 18, township 39 north, range six east, the change in figures there are not erasures, but the cruiser's are lined out and other figures furnished to us by Mr. McKay after his checking of Morrow's work in the field were put above. Morrow worked only for a short time in the spring from about the middle of May until the tenth of June and he was not re-employed on the fall work because he was too

erratic in his estimates. The cruiser's field report on section 21, township 39, range six east, shows that the cruiser's figures are changed by drawing a line through them and writing substituted figures above. And this was the manner in which the cruiser's figures were changed in every instance in which they were changed, showing the alterations made by the checker. That is what a checker is for, to see how the cruisers are running and to make corrections when they are in error. We determine the changes to be made by comparison by the checker's figures and the cruiser's. In some cases a cruiser would be uniformly high or uniformly low. Our checker was Mr. John W. McKay, who lives at Seattle, Washington. Mr. McKay in timber circles in the northwest is rated as a top-notch. His ability and integrity are absolutely unquestioned. Mr. J. C. Murray was checker during the first part of the work. The letter files which I produce here in court of my correspondence with the Clearwater Timber Company and the Potlatch Lumber Company are complete.

On re-direct examination the witness Nease testified as follows:

I have no report or figures turned in by Mr. McKay showing the land he checked and his results. He did not check or recruise every piece of land that Mr. Morrow cruised. That would be recruising and not checking. Checking is cruising a certain portion; for instance, if a man had cruised 4,000 acres, the checker, Mr. McKay, would run out and cruise a quarter section here and there among the land cruised to get a line on how the cruiser was running.

He would go through a quarter section, or in some cases only a forty acre tract, as a rule however a quarter section, of the same land the cruiser previously cruised. In that way the checker would determine whether the cruiser was running high or low, the main idea being to ascertain whether the man is uniformly high or low, or whether he is what we call hit and miss. In some cases a man is hit and miss, and in that case we can't do anything with him. If a man is uniformly low or uniformly high one can by going into the woods with him and talking with him get him up or get him down. In other words a high man or a low man would be safe and one can determine the percentage that he is in error, but the manner in which this is determined is simply by cruising a portion of his lands. If a man is high in one place and low in another we don't keep him. That was the trouble with Mr. Morrow so we did not employ him any longer. I do not know how much of the land that Mr. Morrow cruised was re-cruised by the checker. Mr. McKay can testify as to that.

On further re-direct examination, the witness, Nease, testified as follows:

I do not know whether Mr. McKay found Mr. Morrow's figures correct on a considerable portion of his cruise, and I don't know how much of it he re-cruised or how much of it he checked. Referring to the large discrepancies as shown by the field reports of Mr. Morrow on the northwest of the northeast of section 18, 39-6, Mr. McKay may have gone over all of that work, but I do not know. The crossed out figures

are the figures that were not turned into the county but the other figures that were written in are the ones that were turned into the county. Mr. McKay did not file any estimate of the result of his cruising. I think Mr. Fulton wrote the substituted figures in. I think from Mr. McKay's dictation. I do not know whether Mr. McKay has with him the field books which he used in checking. There don't appear to be any changes made in Mr. Morrow's work in the south half of section thirteen, nor the north half of the southwest quarter of section fourteen. He only cruised the southeast quarter of that section. McKay cruised the balance. The reports did not show any change in the figures of Mr. Morrow on sections 15, 16, or 17, nor 18, except on five of the 16 forties, nor in 19, except in two of the 16 forties, nor in section 20, except in three forties, nor in section 21, except in three forties, nor on the north half of section 21, except in three out of eight forties, nor on the north half of section 23, nor on the north half of section 24; all of the above lands being in township 39 north, range six east. I do not know whether Mr. Morrow's figures that are not changed are within 20 per cent of being correct. Cruiser Bennison's figures, as shown by his field report on section seven, township 39, three east, were raised as a result of the checking of Mr. Bennison's work. The changes made as shown on the report where 50 per cent is changed to 65 per cent in red, and 400 is changed to 535 in red, and 425 is changed to 565 in red, were made as the result of reports received from checking in the

field. These approximate a raise of 33 1-3 per cent, and the changes on section nine in the same township are approximately the same, but there was no blanket raise on all of any cruiser's work. The reason why we continued to employ Mr. Bennison until the 12th of June after he had made reports which required a blanket raise of 33 1-3 per cent, was that we found Mr. Bennison uniform. We did not find him high one day and low the next. I do not know how much of his work we checked. Mr. Murray was the checker at that time. Mr. Murray may have worked along with Bennison and learned that he was running uniformly low. I did not require reports from the checkers because I met them very frequently and talked with them the way things were going and could get more out of them by discussing it than I could by letter. I have not had much experience of my own as a practical timber cruiser in the woods. The practice of changing a cruiser's estimates as the result of the checker's work is a policy that is recognized by all cruising concerns. They all employ checkers for that very purpose. I do not know whether Mr. Bennison knew that his figures had been changed. All the check figures which I have are on the field reports. I have never had any other figures. I did not know that any of the government land which I cruised were included in a national forest. I did not know at the time I filed my bills with the county commissioners that any of the land that I charged for were embraced in power site withdrawals and not subject to entry and I do not now know such to be the

fact. I did not understand that under my contract I was to cruise any general prairie country but in the part of Clearwater county where we worked there was not any section of land that did not require an examination to determine where the timber was, whether there was timber, and that was exactly what the cruise was for. I paid my expenses, the expenses of my men, on the trip up to the mill of the Potlatch Lumber Company about which I have testified. I had no invitation to come to Potlatch except such as is contained in the letters and telegrams in evidence except a letter from the Latah county commissioners to the same effect.

On re-cross examination, the witness, Nease, testified as follows:

The cruising done by me in Clearwater county was done only in the timber belt which is broken up with little openings and settlements here and there. The town of Weippe is in section 15, township 35 north, range four east. I have been there a great many times. There are a couple of stores there and a post-office and probably from six to ten residences. There is a small mill there. Right at the edge of the timber. That section was cruised by Ed. Randolph, who has testified. His report on that section was that there was 3,060,000 feet on it and, being close to the saw-mill, it would be very valuable timber. From his report it appears that there are four forties acre tracts upon which there is no timber. I am quite certain that all the figures in lead pencil appearing on the margin of the various reports which were made at

the time of the comparison with other people's estimates were put there by myself.

The witness was excused.

FRANK ZELENKA, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

I reside at Orofino, Idaho, am engaged in the lumber business. I was one of the commissioners of Clearwater county during the year 1913 and 1914. I first met M. G. Nease in 1913 at Moscow at a meeting of the county commissioners of different counties of Northern Idaho. Mr. Frank Harrison, Mr. Malloy were there. I do not think that Mr. Blake was. I met Mr. Nease again in the year 1913 at Orofino. I also met Mr. Rankin in 1913 at Moscow. I remember about the scrap book of newspaper clippings about which Mr. Harrison testified, and I read some of the clippings at the board meeting in February, 1914, before letting of the first contract to Mr. Nease. I was present at the board meeting on April 15, 1914, when the second contract was let. Papers had been served upon me in the injunction suit brought by John Lewis before letting the second contract. I think I read the affidavits in that suit. I made investigations in regard to Mr. Nease before the first contract was let to him. When the question came up of having the cruising done I considered it an important question which needed all the investigation that we could give it. I did not then understand the matter myself well enough and Mr. Nease and Mr. Rankin and, I think, other cruisers had talked cruis-

ing to us and the systems they used and were soliciting the business. A meeting was called about a week before the first contract was let. Before letting the first contract Mr. Thompson and I went down to Portland. We met Mr. Nease there but we did not talk to him then about the contract. I saw Mr. Oswald West, a prominent man of Portland whom I knew. He was county commissioner of Columbia county and we got all the information we could from him and asked him where we could go to get more information. He said that they had just had their county cruised but did not say that Mr. Nease had done it. He said the only way to do was to have the timber cruised. We went to Astoria in Clatsop county also at Mr. West's suggestion and saw the county officials there. The commissioners of that county had had cruising done there and we saw them and they advised us that the only thing to do was to have a cruise made. We then went to Clackamas county. Mr. Nease introduced us to the county officials of both counties. At Astoria we took up the matter with the county officials who were in session all the time there. We wanted to know the whole particulars of the proposition. We wanted to know the results of their cruises before and after and we asked for something that would be definite to show when we came back to Orofino for action by the board. The assessor at Astoria gave us some data off the records and told us a whole lot about the cruising proposition and suggestions about contracts with cruisers. We did not see the contract between Mr. Nease and Clackamas county but we were given

a copy of the Clatsop county contract, either by the chairman of the board or the judge, who made suggestions about it particularly against subletting. He said it was better to make one man responsible for the whole thing. I heard about Mr. Nease taking contracts at 12½ cents and subletting the field work at four cents. I investigated that while I was there and the county judge of Clatsop county, chairman of the board, said that was where they got into trouble—over the four cent subletting.

Referring to Exhibit Seven to the answer in this case, being the recall petition of E. Blair, I think I met Mr. Blair in Clackamas county. The commissioners talked about this recall and they said that the cruising proposition had been quite a serious one, that they had lots of trouble over it. That the timber companies were all fighting the timber cruise and that we would probably experience the same thing after we went into it. He did not say anything about having trouble with people other than the timber companies. He did say that they had a recall but he did not give the particulars. I was there about the middle of February. I did not examine the records with reference to the recall of the commissioners of Clackamas county. I assisted in designating to be cruised by Mr. Nease under the second contract some state lands where they had been sold under contract and some government land that was supposed to be either homesteaded or liable to be or scripped. I did not know how the state land sold under contract was taxed. I know Mr. Gorman and had to do with his

selection as checker of Mr. Nease for the county. He was first appointed deputy assessor early in the spring. He was recommended by the assessor and confirmed by the board. I do not know whether Mr. Gorman was then a resident of Orofino or not. I know he had always lived there, and then went away. Whether he had sold out about that time or before I don't know. He now lives in Spokane. I do not know whether he was a resident of the State of Idaho at the time we confirmed his appointment as deputy assessor. Mr. Nease's work was checked by the board of commissioners as fast as he turned in his reports. The assessor principally looked after this cruising work for the county. The commissioners checked up to see if they were getting results. As fast as Mr. Nease made his reports to the assessor the commissioners, whenever we could, would go up and check over whatever he had turned in by plats in the assessor's office so that we would know the part that was cruised. This checking showed that very nearly all of the lands which he cruised were taxable. Once in a while we would find a piece which he had charged for were marked state lands or vacant on the assessor's plats. We approved his bills for these because it was understood that he was to cruise those odd pieces of land. I don't remember whether we checked up to see if Mr. Nease had charged for cruising power sites in sections 29 and 30 of township 38, three east. We determined whether or not state lands had been sold or applied for by records furnished by the state land office and those that had been so sold

had been noted on the plat. I don't think we ever figured up the amount of government and state land which Mr. Nease cruised and charged for. We told him that isolated tracts or pieces of government lands and state lands where it was sold under contract were to be cruised. The contract of April 15, 1914, was never modified with respect to the lands it was to cover. The assessor and Mr. Nease I think came before the board one time and wanted to know in regard to the little pieces, forty acre tracts or eighty acre tracts of timbered government land, and wanted to know if it would be worth while or good business to cruise them because they might be homesteaded or scripped or something and we told Mr. Nease that if there was not too much of these pieces that it might be all right to cruise it where it was not going out of his way. I do not know that there was any record made in the proceedings of the board but I know it was understood. I do not recall any record being made of it. The written contract with Mr. Nease was verbally modified to that extent. We usually accepted the suggestion of the assessor in connection with this contract of Mr. Nease. He recommended that these government lands and state lands be cruised. I did not figure up how much the cruising of such lands amounted to. There was nothing said in discussing the contract with Mr. Nease and Mr. Blake about charging for lands upon which Nease reported no timber.

Referring to Mr. Nease's bill in evidence as Plaintiff's Exhibit Number Five, I can't say that we

checked all of it with any plat or records to determine if he was charging for the correct acreage, but there was a list brought down that was checked by the assessor and O. K.'d by him, that so much was due according to the contract. Sometimes the bills were not checked by the board with the plats because it was pretty hard for us sometimes to go over all of that work, but it was O. K.'d by the assessor and supposed to have been checked exactly. We relied to a certain extent upon the assessor to check the bills. We would check until we were satisfied that they were right. Of course sometimes we did not check the whole thing, but we were satisfied that they were all right and took the assessor's O. K. I don't know whether he examined the plats of all the sections covered by Plaintiff's Exhibit Number Five, but the assessor certainly had them checked.

Mr. Malloy resigned as assessor and Mr. P. H. Blake was appointed in his place the latter part of 1913, or the early part of 1914. The matter of cruising the timber had been discussed by the board for quite a while before that. Mr. Blake was probate judge before he was appointed assessor. I do not know why he changed from one office to the other.

On cross examination the witness Zelenka testified as follows:

A great deal of the land cruised by Mr. Nease was near the North Fork of the Clearwater river where the land is sub-divided into lots and where there are more than 640 acres in a section. Mr. Gorman was employed by the board of county commissioners to

check up Mr. Nease's work. Whenever Mr. Gorman filed his reports of the checking of Mr. Nease's work I would every once in a while check up his reports with the work. I went up to the assessor's office and checked lots of times myself. Mr. Gorman's reports were within 20 per cent of Mr. Nease's reports. In addition to the investigation which we made in regard to Mr. Nease and about which I have already testified we got letters from different firms and one from the principal bank in Portland and from the different counties where we were and other parties and we brought these back with us, all relating to Mr. Nease's ability to take the contract and carry it through. Mr. Harrison has those letters. We made as wide and careful an examination as we were able to make under the circumstances. We did everything we could to inform ourselves concerning the matter. We did not go to Portland upon the invitation of Mr. Nease or anyone else. I went down at my own expense. I also investigated Mr. Rankin at the same time. I was told—it was by one of the commissioners of Clatsop county I think—that he had some experience with Rankin and hired him as a checker for the county and he was not satisfactory. Mr. Rankin did not come himself and put in a bid with us but he sent his bid. We found that he was not financially fixed so that he could carry the proposition through. He told me this himself at Portland. He said he was not in condition then to bid. He said that he had got into trouble. Mr. Rankin and Mr. Hunt were in the same office and they proposed to fix up a deal between

them and thought that they might be able to handle it that way. Mr. Rankin proposed that we would do the cruising and furnish the cruisers and let the county pay the cruisers direct and have another man do the other work. We told him that we could not consider that kind of a proposition. We told him that we would give full consideration of any proposition that he would care to make.

The witness then identified as the letters and documents which he and Mr. Torgerson had procured on their trip to Portland and otherwise as a result of their investigations the following:

Letter signed by John Frye; letter signed by Fred H. Moore, commissioner; letter signed by F. E. Leinenweber; letter signed by C. Judd, county judge; letter signed by Fred H. Moore; letter signed by J. E. Jack, county assessor; letter signed by C. S. Howard; letter signed by H. West; affidavit signed by C. W. Blakeley; affidavit signed by W. W. Harris; affidavit signed by W. H. Mattoon.

Plaintiff then offered these letters and documents in evidence and the same were received in evidence and marked Plaintiff's Exhibit Number 25.

Continuing, the witness Zelenka testified:

Referring to the contract of February 24, 1914, we went into this contract for three townships after deciding to cruise, and then after a little while we did not know whether it was just the right thing or not. It looked like it would be an injustice to the three townships not to cruise the rest and it was also attacked by somebody. I forget now who it was. And

there was a great deal of discussion about the matter and the contract was not properly drawn so we decided to employ special counsel for the legal part of it, which we did. We cancelled the old contract with the consent of Mr. Nease. We thought that it would be better to have the contract so that at any time that we felt like we wanted to withdraw after checking that we could do so. So we made the new contract for the whole county subject to the withdrawal of any part or all if we wanted to. This was an important change in the new contract. We had considerable trouble getting that condition incorporated into the new contract. Mr. Nease objected to it. At the time of letting the first contract Mr Rankin and Mr. Hunt I believe put in bids. Mr. Swanson and Mr. Portfors also asked me if there was any show for them to bid and I told them there certainly was, that we wanted to give everybody a fair show. I questioned them and asked them whether they were working for the timber company and whether they were qualified to do this work and they said they did not see why they would not be. I asked them if they would give us a fair cruise and they said they could and wanted specifications. I told them we had no specifications and that I was no timber cruiser, I did not know what to get, and that it would be up to them to furnish the specifications. I told them I would give them a little information about what we wanted and that was a complete record for the assessor, cruising absolutely, so that the assessor would have some records to go right to and base his information on. Mr.

Swanson told me himself that he did not think he could do it and said he would not put in a bid. Mr. Portfors wanted to bid and said he would bid and I told him to get in and get busy, that we could not stand it off any longer, another day. I told him that the day before, and the next morning I asked him if he had got in a bid and he said not yet. We did not pass on the matter before dinner in order to give Mr. Portfors more time. Mr. Harrison talked to him a good deal and insisted on giving him a little more time, which I did, as chairman of the board. He did not put in a bid.

There was considerable discussion about advertising for bids, in a general way, on the streets and otherwise. We understood that it was not necessary. They told us in Clatsop county, Oregon, that they had advertised for bids and they told us that if we advertised for bids that we would get a bid for two cents to 25 cents an acre and would not be able to do anything because both the low bid and the high bid would be made by some timber company. The timber company will be able to make the cruise in that way because they would simply get the pay roll on the county and turn in their own estimates for information to the county. We had had difficulty with the timber companies concerning their estimates. They always claimed that they were too high. We also had trouble about their reporting burns. In one case it was proved that they reported burns when there were no burns. It was these difficulties that caused the cruising proposition to come up in Clearwater coun-

ty, not only in Clearwater county but in all the counties. The new contract with Mr. Nease was drawn up by Mr. Tannahill, the board participating in it, together with Mr. Nease. It was read over in the board's presence and signed by the board, and there was no change made in it after it was signed. I was present at the time of letting the first contract when Mr. Blake made his statement. It was in the afternoon. We had been waiting for Mr. Portfors to put in a bid and Mr. Blake was anxious to know whether we were going to let a contract or whether we were not, and he just made the remark that we ought to do something, that he was getting tired, and if we intended to do anything we should take some action.

I had nothing to do with the appeal of John Lewis from the action of the board of county commissioners in letting the contract for Mr. Nease, nor in the inducing of Mr. Lewis to file suit against the board, nor with the dismissal of that appeal or that suit. I did not know that the suit was going to be dismissed until it was done. I had nothing to do with the retaining of the appeal on the calendar or of dismissing the appeal, nor did Mr. Harrison or Mr. Torgerson, so far as I know.

On re-direct examination the witness Zelenka testified as follows:

The reports of Mr. Gorman of his checking work were filed with the assessor. They were in the form of loose leaves made in book form. I do not know how much I checked. The assessor checked up Gorman's reports and O. K.'d them and also his expense ac-

count. I do not now recall any particular lands that Mr. Gorman checked. He was supposed to dodge around and try and get the different cruisers of Mr. Nease checked. All of the testimonials covered by Plaintiff's Exhibit Number 25 came to us independently of any suggestion of Mr. Nease so far as I know. The one by Mr. Judd was written in my presence and some of the others were dictated in my presence. We took advantage of the provision of the contract allowing us to withdraw lands and withdrew all the lands that were close to Orofino and the Gilbert section and some in other places. That matter was left to Blake, the assessor. I did tell Mr. Swanson that we were counting on local men doing the checking of the cruise. I did not object to him on the ground that he was working for the timber companies. He told me that he had not been working for them for a little while, that he was not doing anything. He considered the matter and said he would let me know and he afterwards did and said he could not do it because he had something else in view. I did not say before the board that I considered Mr. Swanson disqualified because he had been working for the timber companies, but I did say it about Mr. Portfors. I never asked Mr. Portfors to check for the county. Mr. Swanson was the only one I asked to do checking. According to the information we got we could not get a good reliable cruise at a less price than what we paid. I paid no attention to the suits against the commissioners after Mr. Tannahill was employed to look after them.

On re-cross examination the witness Zelenka testified as follows:

I knew nothing of Mr. Swanson's financial ability at the time the letting of the cruising contract was under consideration, except in a general way. I have known him for a long time and after I went into details Mr. Swanson told me himself that he could not handle it. Mr. Portfors' financial responsibility was about the same. I knew that he could not handle it if he was to make a complete cruise and take the whole business.

On re-direct examination the witness Zelenka testified as follows:

One of the objections to Mr. Portfors and the other bidders was that they could not prepare the topography plat and soil classification, etc. One of the objections was that the county attorney, Mr. Holsclaw, advised us that we had better not let it to anybody connected with the timber company. He also advised us to draw up plans and specifications and advertise for bids. We did not do that because we did not think it was necessary. The soil classification and topography plat would show the assessor what was farming land or grazing land or cut-over land, and was as much information to him as where there was timber.

On further re-cross examination the witness Zelenka testified as follows:

There was nothing wrong with the entering into the contract with Nease that I know of. No member of the board or anyone else to my knowledge received any consideration from the making of the same.

L. E. ALBRIGHT, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

I am 26 years of age and live at Portland, Oregon. I worked as compassman for Mr. Nease in Clearwater county in September and October, 1914, and took topography and land classification. I worked with the cruiser Weir.

Thereupon counsel for the defendants propounded to the witness Albright the following question:

“How many times did Mr. Weir pass through each forty while you were working with him?”

Thereupon counsel for the plaintiff objected to the question and to the witness answering the same upon the ground that the evidence sought to be adduced was incompetent, irrelevant and immaterial and did not tend to throw any light on the issues involved in the case or show that the transaction in question was not in good faith nor to impeach the contract sued upon. And plaintiff's counsel requested that the objection might be understood as going to all evidence offered for the same purpose and the court ruled that it would be so understood and thereupon overruled the objection, to which the plaintiff by its counsel excepted. Thereupon the witness Albright answered the question as follows:

A double run for about a week and a single run the balance of the time.

Continuing, the witness Albright testified as follows:

We changed from a double run to a single run upon

the orders given to me personally at Elk River by Mr. Nease. I do not know the date. He asked me if we were double running and I told him that we were and he told me to tell Mr. Weir to single run the balance of the time. I so told Mr. Weir. Up to that time we had double run about a thousand acres, which had taken us nearly a week. After that we cruised approximately seventy-six or seventy-seven hundred acres, which took us 23 or 24 days. One day we covered 600 acres, which was all timber land but about seven acres of burn in sections 14 and 15, township 40 north, range three east. We cruised extensive burns in sections five, six, seven, 17 and 18, township 40 north, range three east. We single run all of these burns except two or three forties. The northeast of the southwest of section five was on a very steep side of the canon, brushy and had no trees on it, and we went only about 50 paces into it from the quarter post. I do not think I was ever on the northwest of the southeast of section five, which was a clean burn. I worked for Mr. Nease in Portland from November 3 to December 3, 1914, in the office assisting in making up reports, copy work, putting in some elevations on some of the draughting, and jibing the sections and townships. By jibing the sections and townships I mean connecting up all creeks, outlines of burns, etc., where they cross section and township lines. In doing this I had to make changes in the creeks, outlines of burns and also elevations in order to reconcile the reports, and I made such corrections on the original field reports. In one township I had

to make a considerable change in the elevations to make them conform to the surrounding townships. I did the writing up on considerable number of these reports showing the character of the timber, damage by fire and probabilities of fire. On a good many of the reports filed by Mr. Nease with Clearwater county I did all the write-up. In doing so I copied the matter other than the plats and estimates from the field reports, but not altogether so. The field reports showed the character of the timber and sometimes there was nothing else on them, and in such a case I had to describe the timber from the size and amounts given on the figures. Not all of the reports showed logging conditions and in such cases I wrote them up from what seemed to be the logging conditions from the topography. Also the distance to outlet, land or stream, damage and probabilities of fire, and sometimes general remarks. I think I did this under the directions of Mr. Fulton and Mr. Nease, but I am not positive whether he told me to particularly or not.

I have recently done some work in Clearwater county in company with Mr. Roy Wherry and Mr. John Swanson in the check cruising which they did from the 27th of March to the fourth of May of this year. I ran the compass and took the topography. I have my original field book which I used in that work. The writings on the right hand pages refer to some of the discrepancies between my work and the reports filed by Mr. Nease at Orofino. My field work is contained on the left-hand pages of the book, and clearly

show the topography, description of surface, contour, elevations, creeks, burns, etc., as I found them on the ground.

Thereupon the defendants by their counsel offered the said field book in evidence and the plaintiff by its counsel objected to the same being received in evidence upon the same grounds as the plaintiff had theretofore objected to the evidence of the work done by the witness Wherry and the witness Swanson; and particularly upon the ground that the issue in the case on trial was not whether Nease's work had been accurately or inaccurately done; that the question whether this witness's judgment was better than the judgment of the men employed by Mr. Nease was wholly immaterial; and upon the further ground that if any of the work done by Nease for the county was inaccurate the remedy of the county was to require Nease under the terms of his contract to make good the work. Thereupon the objection was overruled and the plaintiff excepted and the said field book was thereupon received in evidence and marked Defendants' Exhibit Number 35.

Continuing, the witness Albright testified:

'The green in the field book marked Defendants' Exhibit Number 35 indicates the area of green timber. The red or pink indicates burned land. Brown indicates brush patches. Yellow, creek bottoms, and blue, creeks. The small figures on different subdivisions indicate elevation, patch work indicates contours of the ground and green dots scattering trees in the burn. Small cross work indicates rocks. I

have a photograph which I took while working with Mr. Wherry and Mr. Swanson at a point about 50 paces east and about 15 or 20 feet south of the line near the southwest quarter of section 13, township 37 north, range five east. It clearly shows the objects as they appear to the eye at that time. All the timber shown on the picture, except one big tree, is on the southwest quarter of the southwest quarter of section 13, township 37 north, range five east. I took that picture on the second of May of this year. I took this picture because the southwest quarter of the southwest quarter of section 13 was all marked burned on Mr. Nease's report when it was not. That was why we took the picture.

Thereupon the photograph was offered by the defendants by their counsel in evidence and the same was received and marked Defendants' Exhibit Number 36.

Continuing, the witness Albright testified:

The large tree shown in the photograph is on the northwest quarter of the northwest quarter of section 24, township 37, five east. I indicated by a dot on the plat of that section, Defendants' Exhibit Number Six, about where the tree stood. I did not know at the time we examined these lands how much Mr. Nease had reported on them. Mr. Wherry and Mr. Swanson double run where Mr. Weir had single run most of the time. They measured up trees and wind-falls and butts of standing trees as precautions to arrive at accurate results. We did not have with us any of the original reports of Mr. Nease filed with

the county and we had not taken off the topography from any of those reports. I did not have any of the topography of Mr. Nease's work with me. We did receive the figures of Mr. Nease's work on some of the land in township 37 north, range five east, after we had already cruised it.

I have been employed since I left Mr. Nease with the Pacific Timber Cruising Company.

Thereupon the court adjourned until 9:30 A. M. Friday, May 12, 1916.

The court reconvened at 9:30 A. M. on Friday, May 12, 1916. The witness L. E. Albright upon cross examination testified as follows:

The Pacific Timber Cruising is engaged in the business of cruising counties for assessment purposes. My father has been employed for them also. I have no strong feeling either way against Mr. Nease. I am not particularly friendly to him. Mr. Nease and the Pacific Timber Cruising Company are naturally business rivals. At the time when Mr. Nease told me to tell Mr. Weir to single run, the character of the country we were then working in was just ordinary. It was neither rough nor smooth, rather heavy rolling land. A light timbered country. The Pacific Timber Company got eleven cents an acre for the cruising they did for Clarke county in the State of Washington. I worked for them in their office at Portland, Oregon, as draughtsman on that job.

On re-direct examination the witness Albright testified as follows:

I am usually paid about \$150.00 a month for that kind of work, which is a fair price.

The witness was excused.

JOHN P. HARLAN, being recalled as a witness for the defendants, testified as follows:

I have made search in the court house at Orofino, the county seat of Clearwater county, for any reports made by Mr. Gorman on Nease's work. I looked in both the recorder's and assessor's office and made inquiries of the clerk of the board and of the assessor and I have not been able to find any such reports. I did see a report of Mr. Gorman that was made in 1912 on a cruise that he had made at that time, and we found a plat where Gorman had either made a check or an estimate. It does not state which. But there was no report we were able to find in respect to any check he had made against the Nease cruise.

Thereupon said plat was offered by the Defendants and received in evidence and marked defendants' Exhibit No. 37.

On cross examination the witness Harlan testified as follows:

I made a search through the assessor's office myself with the assistance of the assessor. I did not look through the records and files in the county commissioners' office. I had the clerk of the board do that. I was standing around there some of the time. I made no search myself except in a casual way. I did not make a search through the papers in the vault in the county commissioners' office.

The witness was excused.

ROY WHERRY, being recalled as a witness on behalf of the defendants, testified as follows:

The timber shown by the photograph, Defendants' Exhibit Number 36, is on the Southwest of the Southwest of Section 13, township 37 north, range five, east, with the exception of one large tree which is on the Northwest quarter of the northwest quarter of section 24, township 24 north, range five east. I know where the picture was taken.

On cross examination the witness Wherry testified as follows:

The rest of section 24, with the exception of one large tree shown in the photograph, is burned timber. It is nearly all an old burn or brushy land, but some timber on all of it. I think there is sufficient timber on it so that it might be commercially logged in connection with other timber.

On re-direct examination the witness Wherry testified:

There are about 3800 feet in the tree shown in the photograph on that section.

The witness was excused.

J. C. MURRAY, being recalled as a witness on behalf of the defendant, testified as follows:

I cruised the south half of the south half of section 13, township 39 north, range three east, but I did not report on it because I moved from that locality and Mr. McKay told me that Mr. Hart would cruise that section. I single run the south half of the south half of that section. Mr. Nease never said anything to me about it. I single run it because I had about time to do that quarter section before dark and get back to camp. I made that cruise late in the

fall. The estimates of the timber I found are as follows:

On the southwest quarter of the southwest quarter, 400,000 feet of red fir, 200,000 feet of white fir.

Southeast quarter of the southwest quarter, 300,000 feet of red fir, and 150,000 feet of white fir.

On the southwest quarter of the southeast quarter, 150,000 feet of red fir and 100,000 feet of white fir.

On the southeast quarter of the southeast quarter, 200,000 feet of red fir and 100,000 feet of white fir.

The defendants' counsel then read into the record from the original field report of C. R. Hart of his cruise of section 13, township 39, north, range two, east, as follows:

"On the southwest of the southwest, 15,000 white pine, 10,000 white fir; 100,000 red fir and 20 ties."

Southeast of the southwest, 15,000 white pine, 150,000 red fir; 10 ties.

On the southwest of the southwest, 30,000 red fir, 5 ties; on the southeast of the southeast, 40,000 red fir, 2 ties.

Continuing the witness Murray testified as follows:

I cannot explain the difference between Mr. Hart's estimate and my own. I cannot say nor can any other cruiser say within what percentage of accuracy he can cruise. On such ground as that the best of cruisers on individual forties vary as much as 50 per cent. Mr. Hart might have gone through the forty in a different manner from what I did and this might account for the difference. There might have

been some pine where he went and none where I went. Or I might not see any pine and he might see all or practically all the pine trees that were on the land. When I was cruising in section 39-5, I should judge that I was cruising from 240 to 300 acres a day. I worked there I think from about August 1 until September 1. I probably cruised about 10,000 acres there. I worked there 30 days. I could not say whether it is more or less. I think I left there about the first of September. I had with me a plat of township 39 north, range four east, showing what lands I was to cruise. The brown on the plat indicates the government lands and the red indicates state lands. I used that plat in the field. It then had on it the instructions, "Cruise all blank lands, also lands in brown if timbered." I did not cruise the lands in brown because they were not timbered. I did not cruise any state or government land in that township to my knowledge. I had no information in regard to whether lot two in section five in that township was state or government land, except that it was patented land according to the plat.

Defendants then offered the plat of township 39, north, range four east, referred to by the witness, and the same was received in evidence and marked Defendants' Exhibit Number 38.

Continuing, the witness Murray testified:

I spent from the 9th of April until the first of June, 1914, in checking. After the first of June I cruised from 12 to 14 days during the spring cruise in township 39 north, range five east. During that time

I probably averaged 240 acres a day. I double run it all except a part of section 33. I did more on an average per day in the fall than I did in the spring because I single run quite a lot in the fall. In checking I never changed any figures on the field report of a cruiser, but in one case I substituted figures above the figures of the cruiser. I think this was on the southwest quarter of the southwest quarter of section three, township 38 north, range three east. The figures 330 in the white pine column opposite the southwest of the southwest on the report on that section are probably mine. Also the figures 170 opposite the southeast of the southwest in the white pine column on the same report. I probably checked ten or twelve quarter sections of Mr. Wherry's work in township 38-3 and township 38-5. I found as a rule that his work was very good. In some places he was lower than I was and in some places he was higher, but he was inclined to be about right. In all cases I tried to cruise the land in the exact way he ran it. If he ran a section or a quarter section east and west I ran it east and west. I had done cruising in Clearwater county four years before and I had experience with white pine. I did this cruising for Duncan Brewer Land Company. I single run that work. I have had 37 years experience as a cruiser. My practice in cruising for commercial purposes with reference to the number of times I mean to pass through a forty is to follow the instructions. The instructions of Duncan Brewer Land Company was to single run the forties and that has been my custom as a rule.

I can tell of a good many people who have bought timber on my estimates where I cruised by single running. A great part of this is on the Columbia river slope near Tilamook. It would not make any difference whether you were buying a large tract or a small tract as to whether you single run it or double run it if the cruiser is conscientious. On a single run the cruiser actually sees about six acres out of a forty. If the cruiser sticks strictly to the ordinary term of single running he sees only two and if he sticks strictly to the ordinary term of double running he sees only four. But that is not the way I cruise timber. When I single run I take a four rod strip, but every tally I take a circular half acre or an acre, or square half acre, and estimate that. In single running that way I can cruise in a timber country like that in township 39 north, range five east, about 300 to 320 acres a day fairly accurately.

Thereupon counsel for the defendants read into the record from the report of the witness Nease filed with the defendant county on section 3, township 38-3 east, showing 230,000 feet of white pine on the southwest of the southwest; on the southeast of the southwest, 110,000 feet of white pine, both corresponding with the figures on the original report of Roy Wherry.

Continuing, the witness Murray testified as follows:

I know Mr. Bennison. His work was fairly accurate. I heard Mr. Nease say something about changing Bennison's reports at the Bolinger Hotel in

Lewiston. This was after we got through with the spring cruise. He told Mr. Fulton to raise Bennison's report about 30 per cent as I remember it. That might be a fairly accurate way of arriving at results in cruising and customary. I know Mr. C. F. Snyder. He worked with me in the woods as compassman. When he was compassing for me in various forties I asked him to cruise it with me as we went over the ground. I heard that he had done some cruising before that. He was doing this kind of work with me about three weeks. After that he did some cruising.

On cross examination the witness Murray testified as follows:

My cruising experience has been, some in Minnesota and the rest on the Pacific coast, from Central California up into British Columbia. I have generally cruised for timber buyers. I am a man of family and live in Portland, Oregon. I have been engaged in cruising all the time for the past 28 years. When a cruiser starts into cruising in a country with which he is not familiar he is apt to cover more ground per day as he gains familiarity with the country. The way I did my checking was this: I went over some legal subdivisions that the cruisers had cruised and put down the figures of my estimates and also the topography and then when their reports were turned in to me in probably two or three days or a week or later, I checked my report with theirs. The object of checking is to see that the cruisers are either uniform in their cruise or that they are not too high or

not too low, that they do their work correctly as nearly as possible in the various classes of timber they have to go through. The incident of raising Mr. Bennison's report at the Bolinger Hotel at Lewiston about which I have testified was this: Mr. Bennison I think cruised seven or eight sections in township 38 north, range three, east, mostly all large white pine, which was very defective. According to my way of looking at it his report on that defective timber was too low, that he cut it more for defects than I thought it should be cut. Consequently I told Mr. Nease that I thought all that large pine was too low, and then Mr. Nease, I suppose, raised him 30 per cent or so. I had talked that matter over with Mr. Gorman, the county checker. We had done over forties together, and we agreed that it would cut out more than Mr. Bennison's judgment thought it would. The work of a cruiser is frequently raised a certain percentage as a result of the checker's cruise. If the work of the checker shows that a cruiser is running uniformly low or uniformly high as compared with the checker's work, it is customary to raise or lower the cruiser's figures a certain percentage. I had found that Mr. Bennison's cruise of this particular land was uniformly too low on the white pine, and I understood Mr. Gorman to say so.

My method of cruising a forty acre tract by single running is this. I run into the forty with the compassman a tally. A tally is one-fourth the distance through a forty-acre tract, or twenty rods. I make a careful estimate of a strip two rods on each side. I

take a circular acre or a square acre. I do this at the end of each tally. That gives us in all about six acres to a forty. This method or a similar method is used by many cruisers. There is no one method of cruising used by all competent cruisers. There are over forty, at least, different methods. In order to be a competent cruiser a man must be careful in his work and have enough experience so that he can tell the difference between merchantable timber and that which is not merchantable. In cruising when I come to a burn I pace it out to see how much there is of it. A forty-acre tract of solid timber is much easier to cruise than one that is half timbered and has openings and burns. It is easier to calculate the amount of timber where the whole forty is uniformly timbered than it is where you have to make allowances for openings and burns. In checking if I did not go through the land in the same way that the cruiser did it would not be a fair check on his work. If a forty-acre tract had openings in it and marshes and burns, and it is cruised by different men, one might get double the amount of timber that the other found or they might find practically the same. If one of them ran it east and west he might see a lot that the other did not see in running north and south, but if the two cruisers go over the same ground there should be little difference. I cannot state what is the usual, natural ordinary variation of the estimates of competent cruisers who cruise the same land in the same way. The estimating of timber is not an exact science. I have known what were considered the best cruisers

to vary three or four hundred per cent, but I should think that a usual, ordinary, natural variation ought not to exceed 25 per cent. The man who double runs in his cruise using the two rods strip method such as that described by Mr. Wherry in his testimony covers about four acres, while by my method of single run cruise I cover about six acres out of a forty. Double running does not mean that more timber on a forty-acre tract is actually estimated and counted than in single running properly done. Double run cruising and single run cruising both done by competent cruisers should show very nearly the same results if they both make deductions for defects, etc., in the same proportion. The same cruiser never gets the same result in cruising a tract of land a second time after a lapse of a few months or a year. He will vary from ten to 25 per cent. This is because he does not see it at the two different times in the same way. Weather has a great deal to do with it. As a rule a cruiser gets more timber in bright weather than he does in bad weather. I was given no instructions to single run in the fall. When I had been cruising for about ten days Mr. Duncan came to my camp and he brought me a letter from Mr. Nease, or told me that Mr. Nease said for me to use my own judgment whether I single run it or double run it. I was not told by Mr. Nease or any other person for Mr. Nease either to double run or single run any part of my work. I did not single run in the fall any part of the land which I thought ought to be double run. About one-third of my fall work was double run and about

two-thirds single run. I double run when I got into timber that was defective and spotted or patches here and there or second growth, making it necessary to determine how many acres there were of each class. When the timber was of uniform size and soundness I single run it. That has been my custom. The amount of experience that a man has had in cruising ought to have something to do with whether he should double run or single run. When Mr. Snyder was cruising with me on various forties on some of them our results were within two per cent and some of them we varied scarcely any. When I cruised the south half of the south half of section thirteen, township 39 north, range two east, which I did not report on, I saw only two or three pine trees; they were small, so I did not put down. I didn't see enough to make a thousand feet. I did not know the ownership of any of the lands I cruised while working for Mr. Nease. There has been no change made in my field report on section nine, township 39 north, range five east. The figures 960, 1160, 1050 and 1115 in the left-hand column of the page, are not my figures, but the rest of them are mine and the footings are mine.

Thereupon it was admitted by counsel for defendants that the figures of the witness on said section nine were the ones that were reported to the county.

Continuing, the witness testified:

The estimates on my report on section nine, township 39-five east, are the result of my best honest judgment. I double run the south half and the three forties on the west. I double run seven forties, that

is the south half of the south half of section nine, and also the west tier of forties.

On re-direct examination the witness Murray testified as follows:

Mr. Bennison's work on white pine I think was about right. I do not know why he was raised 33 1/3 per cent on all kinds of timber he reported. I checked him on other kinds of timber. I kept a record of my check on him and I compared it with his work, but I do not have my report here. In cruising I do not keep count of the number of trees but of the number of feet of lumber in the trees. For example, if I see a tree that will cut 200 feet, I count 200 feet. I also took a scribner's rule with me and kept it right with me. The timber in township 39-5 east is quite uniform. That in 39-4 east is not uniform; it is about half second growth. That in 39-5 is uniform in one way, in size. It is spotted, there are burns all through it, there are patches that have no timber. In cruising I would wait until I had found a thousand feet of one class of timber, then I would register that on a tally register that I kept in my hand, keeping track separately of the different kinds of timber. I put this down on a tab which I carried for that purpose and I did not keep it after I had put the figures on the field book. On section two, township 39 north, range four east, I reported on the northeast quarter of the northwest quarter exactly 200,000 feet of white pine ten per cent clear, and exactly the same amount on every other forty-acre tract of that quarter section. I explain that uniformity in this way:

I did not put down the odd figures. For example, if I find that a forty acres runs 4,500,000 feet I never put down the 50,000. If it runs a little less than 4,000,000, I put down the 4,000,000. That section ran practically the same all over the section. It ran uniform in the section. My report on the character of the timber on section two, township 39-4 east, is that it is nearly all young growth and quite sound. The southwest quarter covered with very short and coarse timber, limbs extending to the ground. I wrote in on the report the following: "White pine is quite sound; it is young growth and quite limby. Red fir is short and rough but very sound. White fir is fairly sound but short and usually rough." I understood the instructions which Mr. Duncan brought to me from Mr. Nease to be that I was not to confine myself to double running unless I deemed it advisable. I did not then change my method of cruising. It was only after I got into different timber that I changed my method. I would not have continued to double run unless I had specific instructions to double run, but would have used my own judgment.

On further re-cross examination the witness testified as follows:

The timber in township 39-5 east had a great deal of defect in it and it is part of a cruiser's duty to take account of the amount of defects and exclude it from his estimate of the timber. There is no one rule about arriving at the amount of defects and the cruiser must use his own judgment. The difference in judgment as to the amount of defects might make a

wide variation between the estimates of two cruisers of the same land.

In answer to questions by the court the witness Murray testified as follows:

Two competent and experienced cruisers cruising side by side at the same time and in the same manner might reach substantially different conclusions on individual forty-acre tracts. As a whole they would not. One might find fifteen hundred thousand feet on a forty and another one million. There might be a difference of 33 1/3 per cent or 50 per cent. Cruising or estimating however is not a sham. We try at it as near as we can but no two cruisers that I have ever known, and I have seen and checked a hundred or more, have ever been able to get the same results on one forty.

A checker is supposed to have had more experience than the cruiser. His work is not altogether to see that the cruise is exactly right, but to be in the field and to know that the men actually do the work.

Large timber owners and buyers on the Pacific Coast where timber runs sometimes a hundred million to the section, they may have a dozen number one cruisers that they have employed and known for years. They have the same land cruised several times by different cruisers and who find a wide variance or difference in their work, and in considering the amount of timber they have to take all of these estimates into consideration. That is the practice of all large owners that I know of.

In making a single run cruise one is not constantly

under the necessity of looking a distance of forty rods for one frequently takes side trips, especially if there are openings or if the timber is not running uniform. One of the purposes of double run method of cruising is to get an estimate of as much of the land as possible so that one can know whether it is all timbered. The reason why a checker should go through the timber in the same way that the cruiser did is the checker wants to see that the cruiser's judgment is right. It is for the purpose of checking up the cruiser's judgment. While competent cruisers may in some cases differ very widely, as for instance three or four hundred percent in extreme cases, 25 per cent is quite a difference. In my judgment a natural or average difference between the results of competent cruisers is about ten per cent.

On re-cross examination the witness Murray testified as follows:

When I say that an average normal difference between the result of competent cruisers is about ten per cent I have reference to a cruise of several thousand acres. I cannot say what would be the fair normal variation between the estimates of competent cruisers on a forty-acre tract.

On re-direct examination the witness Murray testified as follows:

Referring to the report on section two, township 39-5 east, signed by me, and also to defendants' Exhibit Number Four, I do not think that the differences shown between my estimates and those of Mr. Wherry and Mr. Swanson on white pine on the northeast

quarter of the southwest quarter and the southwest quarter of the southeast quarter count be accounted for by a different way of running through the land.

On re-cross examination the witness Murray testified as follows:

That discrepancy might be accounted for partially in the manner in which the pacing was done. My report shows that the land is burned down to those two forties. There is one forty that I have as practically all burned. The other one I think I have all green. But in the forty that I have all burned the discrepancy might have arisen in the different manner in which we went into the forties. I considered it practically burned. In the case of the other forty where they have found eight or nine thousand feet of white pine and I a smaller amount, I remember that the timber was very defective in there. The timber on sections two and eleven was especially defective. If the object of a cruiser was to find the largest possible amount that might affect his judgment in estimating defects. I have known Mr. Roy Wherry since April, 1914. He lived at my house a while last winter. I have heard him discuss Mr. Nease's cruise at various times. This was before he made his checking cruise for the county. I do not think that a man in Mr. Wherry's attitude of mind toward Mr. Nease would be an impartial checker on Mr. Nease's work. I think it would be absolutely impossible for him to make an impartial check. No matter how hard he tried it would be impossible.

On further re-direct examination the witness Murray testified as follows:

Referring to my report on section eleven, township 39 north, range five east under "character of timber," I find the following:

"A good quality of old growth pine covers this section, which will cut out a good per cent to clear. Quite a lot of defective timber in the first and second logs, but due allowance has been made for the defect." That is my handwriting. Also the words "White fir is small but sound." My report shows that all but a little of the northeast quarter of the southwest quarter was burned. It shows all burned except ten acres, and my report shows that I found no timber on that.

The witness was excused.

H. M. LEIGHTON, produced as a witness on behalf of defendants, having been first duly sworn, testified as follows:

I am a compass man. I worked for M. G. Nease for the past two or three years. I worked for him in the year of 1914 in Clearwater and Latah counties, Idaho. I acted as compass man for Mr. Murray, Mr. Tuttle and Mr. Gorman in Clearwater county. My duties as compass man were to run the lines and when I was working with Mr. Murray to do the topography work. I made topography reports for Murray but he made his own reports on the timber estimate. When I was working with Mr. Tuttle, I made all his reports, both the topography and the timber. When we were at Pierce—I cannot give the date—Mr. Nease told us to examine separate forties of state

lands where we had to go across it. Mr. Nease indicated the lands to be examined by township plats made up in the different colors. The school lands were marked out and the government lands were left blank as I remember, but I am not sure. There was nothing written on the plat to indicate what we were to do with lands that were left blank, because it was government land. Mr. Nease told us that where there was a forty of state lands surrounded by private owned lands, and where we had to go through it, we were to estimate it. I don't think I submitted any estimate on any such lands. While I was working with Mr. Tuttle and after we had been working for about two weeks in the fall, I took the reports into the office of headquarters and Nease looked them over and said some of the others were doing more work than we were doing. I reported this to Mr. Tuttle. I think we were then averaging about six forties a day in heavy timber and rough ground where it was slow going and we couldn't hurry.

I was present at a conversation between Mr. Nease and Mr. Wherry at the Bollinger Hotel with reference to timber on lands not examined in township 38-6. Mr. Nease asked Mr. Wherry if he had been over a certain piece of land in that township; I can't say what piece it was. The substance of the conversation was that Mr. Nease wanted to know what Wherry knew about that piece of land. He asked Wherry if the piece of land would average with the surrounding country and if he had gone over the land. Mr. Wherry said he couldn't tell whether it would

average or not because he had not made any estimate of it. I acted as compass man for Mr. Gorman in Clearwater county for some time, who was the county checker employed by Clearwater County. In doing the topography work I did not put in the elevations on the 40 lines as specified in Mr. Nease's written instructions to cruisers, because Mr. McKay told me to put four or more elevations on each forty, at points so that the four elevations would be an equal distance from the center and sides of the forty. I didn't depart from the instructions in any other particular. I classified the soil in connection with the instructions. I could see what the character of the soil was by holes made by uprooted trees, at the banks of creeks and slides, etc. I showed the elevations where we crossed the ridges, creek bottoms and elevations. I was paid by Mr. Nease at the rate of \$3.50 a day and my expenses from the time we left Pierce City to go to work. I made the report shown on the back of Field Report on Section 1, Township 37 North, Range 6 East, with the exception of the general remarks, and turned it in. The figures 1215 under White Pine column, the figures 150 in White Fir column, and the figures 100 in the Red Fir column and the figures zero in the spruce column, all opposite the Northwest quarter, I don't think were on the report when I turned it in. Neither Mr. Tuttle or myself had any occasion to place any such figures on the reports.

Referring to the cruiser's original report of section 18, township 39 north, range 6 east, figures 950

in black ink about the figures 1220, which have been crossed out in the white pine column under the N. W. of the N. E., those changes were not made prior to the time the report was turned over to Mr. Nease. I made up the report on the timber of that section and I didn't use any ink at all in making up the report for Mr. Murray and the same is true in regard to the figures shown in ink on the report of Section 19, Township 39-6.

On cross examination the witness Leighton testified as follows:

I don't know who put in the figures in ink on the report sheet for Section 18-39-6 East. Mr. McKay was head cruiser on the work. The figures indicate that the report had been revised by a checker. The duties of a checker are to go through the timber that has been cruised by the cruiser and to see if his work has been properly performed and to make corrections if they are needed. When I say that I made up all the reports for Mr. Tuttle, I mean I made up the written reports; I took the topography and put it in on my own responsibility and the timber estimate was submitted to me and I copied it in on the report blank. I filled out the report blank and Tuttle signed it. The reason I was called to work as compass man for Mr. Gorman was that I had gotten acquainted with Mr. Gorman and his compass man was unable to go with him. I acted as compass man for Gorman about thirty-one or thirty-two days. One of the chief duties of a compass man is to see that the cruiser is properly located on the ground, finds

the corners, etc. While I was working for Mr. Gorman he was cruising. He was checking. The checker performs his work the same as a cruiser. He picks out pieces of land indiscriminately through a section that the cruiser has covered. I have been in the business of compass man about six years. I can tell whether a cruiser is properly doing his work. Mr. Gorman performed his work in a very thorough manner. He was very particular in regard to his locations and corrections. I don't know where Mr. Tuttle is now but I heard he was in Missouri. I acted as compass man for him approximately 70 days. He was a competent cruiser and did his work properly.

Mr. McKay did some checking on Mr. Murray's work. He seemed to do more checking on Murray's work on the spring trip than he did on any one else's. They didn't seem to agree at to sizes, number of logs to the tree or in any way in regard to an estimate. They seemed to be working on entirely different systems.

On re-direct examination the witness Leighton testified as follows:

There were no corrections made on Tuttle's work after the reports were turned in. When I was working for Mr. Gorman he checked some in Township 36-5, Township 40-1, Township 38-6, Township 40-2, Township 39-1, Township 39-2, Township 37-5. We checked Mr. Miller's work around Pierce. I think Mr. Gorman made a written report of his checking to the county. I know the form in which the report

was made. It is made on a book about twelve inches square; plat book, you might say. The timber estimate was made on one side and the topography report was made on the other and the description of the land was given. They were not Township books but there were different townships put in the same book. If I remember correctly there were three of those books. Mr. Gorman didn't have the figures of the cruiser whose work he was checking. I don't know what became of Mr. Gorman's reports, nor do I know where Mr. Gorman is now. I have not seen the reports since Mr. Gorman had them. I didn't see him deliver them to any officer of Clearwater county. I don't know whether any figures made by John Miller or any other cruiser were changed or modified by reason of Gorman's checkings. In regard to my testimony concerning the statement made by Mr. Nease about the examination of state lands over which we had occasion to pass in cruising through lands, I find on looking at the plats of the township I worked in, we didn't submit any estimate on state lands. I couldn't say as to whether the instructions applied to state lands or government lands. At one time Mr. Nease made the statement that he could work in a certain amount of state or government land and he told us that in going over such land, enough to make an estimate, to do so if it was timbered but if it was not timbered to pay no attention to it. I understood that the lands he referred to were segregated forties, marked on the plats as not being privately owned. I do not know whether he referred to state or govern-

ment lands. It was one or the other and the statement was made at Pierce, Idaho. I think Mr. McKay and Mr. Wherry were there at the time. This was in the fall. At one time I had records of the work I did in Clearwater County but I turned them over to Mr. Nease. I do not remember when. I was with Mr. Tuttle during his cruising of Section 19, Township 37 North, Range 8 East. I don't think we submitted any estimate on state or government lands in that section. We might have done so but I don't remember.

On further re-cross examination the witness Leighton testified as follows:

The instructions Mr. Nease gave about the estimating of unpatented land was that if in the course of our cruising we came into an isolated forty that was not patented, to estimate it, and I don't remember whether they were state lands or United States lands.

Witness excused.

Thereupon defendants by their counsel offered and there was received in evidence, document marked defendant's exhibit 18 which had theretofore been marked for identification and which is a comparative statement of Nease's and Morrow's cruise on certain lands there listed.

Thereupon it was stipulated between the respective parties that the defendants might substitute copies for exhibit 21. Thereupon the defendants by their counsel offered and there was received in evidence defendants' exhibit Number 20-a, being a blue

print of Township 36 North, Range 4 East.

JOHN MALLOY, produced as a witness on behalf of defendants, being first duly sworn, testified as follows:

I live at Orofino, Idaho, and was an assessor of Clearwater County in the year 1913. My term of office expired in January, 1914. I was succeeded by P. H. Black and I acted as deputy under him. I am acquainted with Mr. Gorman who was hired by the County as checker. Mr. Gorman did not do very much when he came into the assessor's office with his reports. He got his numbers for the plats and when he would come back in from the field I never saw him do very much in the office. His reports were all taken over to the Fidelity Bank as far as I know. The reports were never exhibited to me. Mr. Blake always kept these reports at the bank. They were never in the office as long as I was there. They never discussed the reports in my presence and they were never filed in the assessor's office. They were never left around the office. They might have been in the office while they were working on them but they were always taken over to the bank. No other records of the Assessor's office, so far as I know, were kept at the bank. Mr. Blake fixed up the plats that were given to Mr. Nease. I didn't assist in doing so. It was done in the assessor's office. I think Mr. Blair Hoar helped Mr. Blake do this work. It was all done in the office as far as I know; of course I was not there all of the time. They got the records and furnished Mr. Nease with blue prints from the plats in

the assessor's office showing what lands to cruise. The words "State Power Site" on the plat of township 38-3 is in my handwriting and that of my brother. This plat was in the assessor's office with the same designations on it during the year of 1914. It had always been there since the plat was made up in 1911. It was a part of the general plats from which Mr. Blake secured his information of the lands to be cruised.

Thereupon the defendants by their counsel offered and there was received in evidence, plat of Township 38 North, 3 East, identified by the witness, and the same was marked defendants' exhibit No. 39.

I asked Mr. Gorman a time or two how his checkings were coming out with what Nease's men were reporting but I didn't find out anything.

On cross-examination the witness Malloy testified as follows:

At the time Mr. Gorman's reports were kept in the vault of the Fidelity State Bank, the assessor had no vault. I never saw any of Gorman's reports but the papers that were taken by him and Mr. Blake to the bank, were papers that Gorman brought in from the field and I suppose they were his reports. I made no search for these reports recently. I have not a very friendly feeling for Mr. P. H. Blake but I have nothing against Mr. Nease.

On re-direct examination the witness Malloy testified as follows:

No one came into the assessor's office while I was there and asked to see Gorman's reports. Mr. Gor-

man was a director of the Fidelity State Bank and Mr. Blake cashier of it and I was also a director of it. Other blue print records of the assessor's office were kept in the county treasurer's office where there was a fire proof safe and in the same building with the assessor's office.

Witness excused.

JOHN R. BECKER, being recalled for further cross-examination, testified as follows:

Referring to my tabulation which is defendant's exhibit 19 under the general heading "Unpatented;" in the first column are 26,706.59 acres. In the next column 7,679.78 acres. Those two totals together make up the grand total of the unpatented lands that were cruised by Nease. By unpatented lands I mean lands not subject to taxation prior to January 1st, 1915. Those totals included both state and government land. None of the state lands included therein are taxable as land. A small portion of the State land included is taxable in a way; that is to say purchasers have taken them from the state; they have certificates of purchase and the assessor taxes that equity. In my tabulation there was no segregation made of state lands sold under contract and those not sold under contract and I included under the heading "Unpatented Lands," all state lands no matter whether sold on contract or not. The amount of state lands so included is 6165.46 acres. I think slightly over $\frac{1}{4}$ of that amount is land sold under contract.

Witness excused.

M. G. NEASE, being recalled as a witness for the defendants, testified as follows:

I don't think I wrote any letters to any officer or representative of Clearwater County prior to the 24th day of February, 1914, or received any letters from any such officer or representative. I have my whole correspondence file here, and submitted it. I wrote circular letters to a good many counties, beginning back as far as 1908, but I had no correspondence with Clearwater County that I remember of even in a circular way. I was in Clearwater County early in the fall of 1913 and was canvassing this entire part of North Idaho and spent most of my time in that country from that time until through the year of 1914. I was canvassing Pend Oreille County, Washington, Stevens County, Washington, and what is now Boundary and Bonner County, Idaho, and Kootenai County, Shoshone, Benewah, and in fact all these timber counties. The first time I ever saw Mr. Blake was at Coeur d'Alene convention early in the year 1914. I don't remember the exact date. I didn't talk to him about my contract with Clearwater County at that time. I went down to Clearwater County afterwards and before February 24th, 1914, and talked to officers of Clearwater County about it. I was advised that they had called a meeting for the purpose of considering letting the contract and making some determination of the cruising matter. I was advised of that when I was at Orofino. I do not remember the date. I have in my possession all the correspondence referring to any negotiations for this contract.

(Witness excused.)

Thereupon defendants rested their case.

EMIL TORGERSON, produced as a witness on behalf of plaintiff, in rebuttal, being first duly sworn, testified as follows:

I live at Elk River and have resided in Clearwater County about six years. I am in the pole business. I was one of the County Commissioners for Clearwater County during the years of 1913 and 1914. During the time I was commissioner, the Board took steps to investigate the question whether or not a cruise of the taxable lands of Clearwater County should be made. There had been a lot of talk about it among the people of Clearwater County and we thought it was quite necessary to have a cruise in order to have an assessment on timber property. We had different meetings at different places, one here in Moscow and one in Coeur d'Alene and met with different commissioners and assessors. We also met with Mr. Robinson, the secretary of the state land commission, and we all agreed it would be a good idea to have a timber land cruise. Mr. Zelenka and I went down to Portland and went to different counties where they had had cruising done and they informed us they had very good satisfaction with it, so that they were quite well satisfied it was a good thing to have the timber lands cruised. I have heard the evidence given by Mr. Harrison and Mr. Zelenka in regard to what occurred at the time the first contract with Mr. Nease was let. I was there at the time the contract was let and participated in the framing of it. There was also the bid of Mr. Rankin and Mr. Hunt. Mr. Zelenka and I investigated the financial

responsibility and reliability of Mr. Rankin and Mr. Hunt on our trip to Portland. Mr. Rankin told us himself he didn't have the finances to take care of it himself and offered to make a bid on it; to superintend the cruising part of it and get paid every thirty days. Upon investigation of Mr. Rankin's character we did not think he was just the kind of a fellow we wanted. Mr. Rankin's bid was not signed at all. We considered Mr. Nease's bid the best bid offered. We employed Mr. Gorman to check Mr. Nease's cruising work and he began his work shortly after Mr. Nease did. Mr. Gorman sent in reports of his work and I assisted in checking them up with Mr. Nease's reports. I do not remember that Mr. Malloy was present at any time when we were doing this checking. At the time when the Board had under consideration the allowance of Mr. Nease's bills, there was quite a talk as to whether or not they should be allowed and Mr. Harrison went upstairs to Mr. Becker's office for some information; to see whether he had anything to file against having them allowed and he came back and told me himself there was nothing against them. He had seen Mr. Becker and there was nothing against them. My office as County Commissioner expired soon after the cruising was done. The effect of the cruising was to raise the taxable property of the county considerable. There was nothing wrong in the letting of the contract that I know of except that there seemed to be some irregularities about letting the first contract in that it was not advertised right or the meeting was not called right.

On cross-examination the witness Torgerson testified as follows:

I don't know that there is anything wrong about the form of Hunt's bid. When Mr. Zelenka and I were in Portland we looked up Mr. Hunt as well as Mr. Rankin. We consulted some people in Portland—we consulted a Mr. West. I did not know that Mr. West was one of the Board of County Commissioners of Columbia County, Oregon, which let a contract to Mr. Nease. We also consulted a Mr. Judd in Astoria, who was one of the county officials there. Mr. Nease introduced us to Mr. Judd and Mr. Zelenka introduced me to Mr. West. The man we consulted told us that Hunt's work ran in line with Rankin's. We did not investigate at any place where Mr. Hunt had had cruising contracts. From what we could learn about Mr. Rankin we didn't think it was worth while to take the time to investigate Mr. Hunt.

At the time the second contract of April 15th was let there had been served upon me a copy of the complaint in the case of John Lewis versus Frank Zelenka et al., being defendant's exhibit No. 21. I read the complaint but I do not know as I read the rest of it. I do not know whether I read any of the sworn statements and other exhibits attached to the complaint in that action. I read the newspaper clipping that Mr. Harrison referred to in his testimony. I first met Mr. Nease in Moscow in the year of 1913. No arrangements were then made that he should have the contract. We first seriously discussed this

contract with Mr. Nease after we had been down to Portland. No agreement had been reached before that time. The agreement was reached after we got back to Orofino on February 24th. I didn't notify any cruisers in Seattle, Spokane, Lewiston or Moscow that a contract for cruising would be let in Clearwater County on February 24th. We told anybody that asked us anything about it. I didn't know at the time we entered into the contract that Mr. Nease had been taking contracts in Oregon at 121½c and subletting them at 4c. We compared Mr. Gorman's estimates with Mr. Nease's reports but I cannot recall on what lands. They ran very near the same; within twenty per cent. I do not know whether Mr. Gorman checked in the field with Mr. Nease's men or went in after they had finished their work and checked it up. We made no inquiries at any banks at Portland in regard to Mr. Hunt. We did not make any effort to find out about him from timber companies, railroads or any one else other than Mr. West and Mr. Judd.

On re-direct examination the witness Torgerson testified as follows:

Mr. Zelenka talked with Mr. Hunt and myself. Notice of the meeting of the Board of County Commissioners of February 24th, 1914, was posted on the bulletin board in the court house at Orofino.

(Witness excused.)

FRANK HARRISON, a witness, was recalled on behalf of plaintiff and testified as follows:

When we found that Mr. Nease had completed his

work and checked with the assessor, I went up to the assessor's office and talked to Mr. Blake about it and he said he had carefully checked everything and that as near as he could see everything was all right. I saw some of Mr. Blake's figures that he had compared with the plats and I felt satisfied, inasmuch as Mr. Blake was a county officer and I believed he would do the best he could and had done right, that it was all right. When we got ready to draw the final warrants, I had thought that something would be filed against them to stop us from issuing them or probably stop the auditor from writing the warrants after we had approved the bill, and to see if anything was going to be filed. I went up to Mr. Becker's office and told him we were about to approve the work, the last warrants, and asked him if he had anything to file against it. He said he did not think it would be any use filing it and I told him I thought it would be of great use and I wanted him to file anything if he had it; that I had heard a great deal of talk and I wanted something in writing filed so that the Board could act, and we talked four or five minutes and he said he didn't believe he would file anything and I went down and reported to the Board. There was nothing wrong with the awarding of this contract to Mr. Nease that I know of. No member of the Board, or Mr. Blake or any other official or any one else received any consideration for the awarding of the contract.

Referring to my former testimony about checking up clearings and patches of various farmers in

the Weippe country; I checked up the whole Weippe country and the country around Pierce and about a third of Frazer. I should think better than one hundred or one hundred and fifty farmers.

On cross-examination the witness Harrison testified as follows:

I remember being in the office of Mr. Becker, one of the counsel for defendants, on the 24th of February, 1914. I don't remember whether it was before or after the contract was let. There were a number of citizens there and they said that in their judgment the price was too high; that the contract was improvident and that the commissioners had no right to let such a contract; that they had nothing to do with the assessment of property. I think I then made some statement to the effect that I would protest against it. The meeting with Mr. Fohl upset that. I told Mr. Becker afterwards that the reason I didn't vote against the contract was because I thought that Mr. Zelenka had seen Mr. Fohl coming out of the house. That was partly the reason and the rest of the reason was my conversation with Mr. Fohl.

(Witness excused.)

BLAIR E. HOAR, produced as a witness for plaintiff in rebuttal, being first duly sworn, testified as follows:

I live at Lewiston, Idaho, and I am the receiver of the United States Land Office at that point. I formerly lived at Orofino in Clearwater County. I was deputy assessor of that county for eighteen or nineteen months and county treasurer for two months.

As county treasurer I had charge of the books and the collector's records of the county.

On cross-examination the witness Hoar testified as follows:

I checked up the blue print plats constituting defendant's exhibit 20 and found them correct as to state and government land.

On re-direct examination the witness Hoar testified as follows:

I personally checked and compared the 38 maps now shown to me with the records in the United States land office at Lewiston and they are correct to the best of my knowledge, omitting any possible errors that might creep into a checking.

Thereupon the plaintiff by its counsel offered and there was received in evidence the aforesaid 38 maps which were marked as one exhibit, plaintiff's exhibit No. 27.

Continuing, the witness testified as follows:

The notations on the margins of these various plats ("Plaintiff's exhibit No. 27") are absolute copies of the record. These notations are joined to the particular lands to which they refer by lines drawn from the notations to the lands on the plat to which the notations apply. The notation shows whether the land was vacant, homestead, scrip, timber and stone; the serial number of it, the name of the entryman, the date it was taken and if it has been patented it gives the number of the patent; the date of the patent and in connection with it is the selections. While the record at Lewiston in some places doesn't cover it very

well, we have at least the number of the selection opposite each of them. The transcripts constitute plaintiff's exhibit No. 27 and are true transcripts of the records in my office. It is a transcript of the record and an exact one up to the 4th day of May, 1916, at the time this certificate was made. From these sheets I made a computation which shows the number of acres of government land cruised by Mr. Nease that were homesteaded or otherwise entered. 8190.26 acres of the lands cruised by Mr. Nease were under live homestead entries, that is to say that the lands were in the possession of the homesteaders but final proof had not been made. 2723.14 acres of the government lands cruised by Nease have been patented. An additional amount of the government land cruised by Nease, to-wit, 971.61 acres, has not yet been patented, but has had scrip laid on it, and mineral applications have been filed upon 253.51 acres more.

Upon re-cross examination the witness Hoar testified as follows:

The plat of Township 4-6 East, shows 237.26 acres of government land which has never been entered so far as our records show. This land would be more subject to timber and stone entry than settlement. There is no reason why those lands should not be entered if any one desired them. The plat of Township 38-6 East, shows 240 acres of government land and 120 acres of state land. None of the 240 acres of government land has been entered. It is subject to entry except what is in section 16-36. There are about eleven hundred acres of government land in

township 41-3 and none of it has ever been entered. On my plats, which constitute plaintiff's exhibit 27, the state lands are indicated in brown, the government lands are indicated in yellow and blue. The yellow indicates an entry of some kind and the blue indicates that the land is vacant and not entered. Of the 1161.55 acres of government lands which Mr. Nease cruised in township 40-3, none of it is now entered although the record shows that some of it had been entered in the past but entry released; as for instance the southeast quarter of section twenty-five was homesteaded. This homestead was relinquished on February 24th, 1908. There is no live entry on this land at the present time. None of the 207.59 acres of government land cruised by Mr. Nease in township 39-4, has been entered except that the state has made a selection in section twenty-five. The land designated by my notation "Vacant Power Site No. 106" is in a way subject to entry; that is to say if an entry was made on it the land office would have a right to reject the entry but the entryman has a right of appeal—to go up and ask to have his entry allowed. This is sometimes, but not often done. The government permits an entry on these lands. We have had several such cases this last year but not along the North Fork of the Clearwater River.

The government allows the entryman to have the land if he can show that the land he wishes to enter is of such a character that it would not be any good for a power site. The lands along the North Fork

of the Clearwater River marked upon the plat of Township 38-3 of Plaintiff's Exhibit No. 27 is marked in brown thereon which indicates that it belongs to the State of Idaho. Some of the power sites are marked in red and some in yellow. In section 33 of the above township, there is nearly 100 acres in power sites and in section 14 there are some power sites along both sides of the river. Whenever dates appear on the margin of a plat with reference to an entry, the first date refers to the date of entry.

On re-direct examination the witness Hoar testified as follows:

The notations T. and S. mean timber and stone. Entry "Min." means Mineral location and "H. D." means homestead.

(Witness excused.) -

Thereupon plaintiff by its counsel offered and there was received in evidence plaintiff's exhibit No. 28 which is a certificate from the chairman of the State Board of Land Commissioners showing the status of the lands which are designated as state lands upon the plats marked Defendants' Exhibit No. 20.

JOHN F. GORMAN, produced as a witness on behalf of plaintiff in rebuttal, having been previously duly sworn testified as follows:

I am a resident of Spokane, Washington. I resided in Clearwater county for about ten years up to the year of 1912. At the present time I am engaged in the manufacture of seed graders. I followed the business of timber cruising for about 22 years in the

states of Wisconsin, Idaho, and I have cruised for some individuals in Idaho and also for Clearwater county. I was employed by Clearwater county to check up the cruise made by Mr. Nease and his cruisers in the year of 1914. I cruised parcels of land in different parts of the county that Mr. Nease's men had cruised and made a record of those and compared them with his cruise. They were checked over by the county commissioners and assessors. This checking was done by me after Mr. Nease's men had made the cruise. I checked practically during all the time that Mr. Nease's men were cruising. In checking, I cruised but a small per cent of the lands cruised by Nease.; taking a tract—a quarter section or half section generally—and estimating the timber on that tract, each kind of timber separately and the size of it. Then I would make a record of that and turn it into the office. I checked some of Mr. Morrow's figures in section 21, township 39-6. I turned over my reports to the assessor of Clearwater county. They were in ten plat books numbered consecutively from one to ten and they show all of my work. I have some notes that I made during the time I checked Mr. Morrow's work. I made these notes out in the woods at the time I made the estimate. These notes show my estimate of the northwest quarter of the northeast quarter of section 21, township 39-6 east, as follows:

White pine, 850,000, red fir 45,000, white fir 260,000, tamarack, 35,000, cedar 410,000.

I haven't any of Mr. Morrow's figures except on

the white pine which are 315,000. I had some conversation with Mr. Morrow regarding the difference between my checking and his cruise at the cabins where I was camping in section 17 of that township. I told him I thought his estimate was a way too low and I asked him to go back and re-cruise it. I do not know whether he did so. I found generally that Mr. Morrow was higher or lower than I was in the different places that were cruised. When I find that a cruiser is high or low, what I do in the way of trying to correct his reports is to notify his checker; for him to go out and test the cruise out. I don't know what is customarily done with the cruiser's report after the checkers are through with it. If the cruiser's work was uniformly high or uniformly low, it would be corrected by raising it a certain per cent or lowering it a certain per cent. If the cruiser was low at some places and high at others, I don't believe it could be corrected. The only way to correct that would be to re-cruise. I filed my reports with Mr. Blake the county assessor at Orofino and I have not seen them since. I didn't take them out and take them over to the Fidelity State Bank or any other place. I observed the character of the men that Mr. Nease had working for him on the cruising job of Clearwater county and I thought they were a very good set of cruisers.

On cross-examination the witness Gorman testified as follows:

I think Mr. Morrow cruised the N. W. quarter of the N. E. quarter, Section 21, Township 39-6. After

I checked Mr. Morrow's work, on that 40 acres, I didn't insist upon his removal. He cruised some time after that. I checked other parts of his work. I checked his work on the northeast of the northwest of the above section 21. I found 1,220,000 white pine, no red fir and 690,000 white fir. My reports filed with Clearwater county would show the difference between my estimates and those of Mr. Morrow's and those of Mr. McKay on this forty; and also on the northeast quarter of the northwest quarter of that section. My duty as checker was not simply to report to Mr. Nease's foreman but to report to the county assessor. I do not know why the estimate of the above section 21 as turned into the county was not rectified in accordance with my report. My residence while I was employed as checker during the year of 1914 was Spokane, Washington, and I had lived there for about a year and a half. I voted in Clearwater county the last time in 1913.

I was associated in business with Mr. Blake in this way that I was a director in the Fidelity State Bank and was slightly interested in the Home Land Company. Mr. Blake was also interested in that company.

In doing my checking I double run because I thought it was necessary. A complete, accurate and thorough cruise of such lands as I checked can be secured without double running if the cruiser takes the time to do it. It would take fully as much time to cruise 160 acres and do it right by single running as to do it by double running. I can double run and

properly estimate from 160 to three hundred twenty acres a day. I observed Nease's men in the woods when I was working there. I had no way of knowing how much land they were cruising per day. I think in certain classes of timber they could do four, five and six hundred acres a day on the average and do it right, but I don't think they could do that averaging the whole county. I never figured up from their reports how much these men were doing per day. I checked up the work which Mr. Nease turned in with some estimates which I had previously made for the county. Defendants' Exhibit 37 is the report of my estimate on sections nineteen and twenty in township 36-4, made in the winter of 1913 and 1914. I turned that into the county prior to Mr. Nease's work. It was in the assessor's office and accessible. I didn't call the attention of the assessor or any other officer to the fact that I had already cruised those lands and thought it would not be necessary for Nease to cruise them. My estimate on section nineteen, township 36-4 east, was as follows:

On the northeast quarter of the southeast quarter, 83,000 white pine; on the northwest quarter of the southeast quarter, 72,000, white pine; on the southwest quarter of the southeast quarter, 101,000, white pine; on the southeast quarter of the southeast quarter, 40,000 white pine; on the northeast quarter of the southwest quarter, 330,000, white pine; on the northwest quarter of the southwest quarter, 126,000, white pine; on the southwest quarter of the southwest quarter, 270,000, white pine; on the southeast quarter of the southwest quarter, 77,000 white pine.

I didn't check up any of Ed Randolph's work to my knowledge. I didn't know he was cruising on some of the land that I had cruised a few months before. Referring further to my estimate and report of said section 21, and the statement thereon; 3,200,000 feet, three-log timber, 60% white pine, or 1,920,000 feet white pine; I never compared that statement with Mr. Nease's figures. I didn't cruise the land at the time I made that statement. I just made a rough estimate. I just covered the ground but didn't make a systematic cruise. By three-log timber I mean it takes three logs to make a thousand feet. I saw some such timber in section 21, township 39-6. I did some checking in that section later. Mr. Morrow, I think, cruised that section. I don't remember checking up the official report of Mr. Morrow and Mr. McKay on this section 21. The fact that Mr. Morrow reported seven-log timber on the northeast quarter of the northwest quarter, varying in diameter from twenty-eight to thirty-four inches, while I reported three-log lengths, is explained by the fact that he referred to seven logs to the tree and I referred to three logs to the thousand. The discrepancy between his figures and mine on white pine can be explained by the fact that what I made was just a preliminary cruise. It was not an accurate estimate. I was sent out by the commissioners, to take a check of the country and see what was burned. I was not instructed to make an estimate. I probably didn't go through the forty at all, only just along the side of it.

The assessors and the commissioners went over the reports of Mr. Nease and compared my reports with his. I seen them working at it.

On re-direct examination the witness Gorman testified as follows:

Referring to my report on sections nineteen and twenty, township 36-4 east; that report was based upon examination which I made by running between the forties and sometimes just along the section line. I had only about ten days to leave Orofino, make this report and return and it took me two days to get out to the timber and three days to return which didn't leave me very much time to cover this territory. I didn't thoroughly cruise it because I didn't have the time. I didn't claim to cruise it. As I understood it they were not assessing on an estimate. The only distinction that was made between the different classes of land was whether it was green timber or whether it was burned and therefore I didn't pretend to get an accurate estimate of the timber; I wasn't very particular about it. My report—which is Defendants' Exhibit 37—is different and it was an estimate.

(Witness excused.)

P. H. BLAKE, produced as a witness for plaintiff in rebuttal, being first duly sworn testified as follows:

I live at Orofino, Clearwater county, Idaho. I am a United States postmaster. I was assessor of Clearwater county practically all of the year 1914. I had something to do with obtaining a cruise of timber

lands of Clearwater county in 1914. My attention was first called to the question of cruising while I was a member of the Board of Commissioners of Clearwater county during the years of 1911 and 1912. We always had a great deal of trouble in adjusting valuations on timber lands in our county before the board of equalization, that is, the county board, and also before the state board of equalization, and there was considerable agitation over the matter of adopting some plan whereby the assessor would be supplied with data that would give him something tangible on which to base the valuations of timber lands. I think there were some meetings held by officers of the different timber counties during the year of 1913. I did not attend any of those meetings, however. The first meeting that I attended where the matter was discussed by representatives of the different counties was at Coeur d'Alene in January, 1914, very soon after I had taken the assessor's office in Clearwater county. At this meeting in Coeur d'Alene, there were representatives of the different five or six counties in Northern Idaho there, in the person of assessors or commissioners, in some cases both. In discussing this question of valuations on timber lands, the brief result of the meeting was this, that we, the assessors who attended that meeting, would return to our several counties and report what action had been taken, and try and urge our county commissioners to cruise at least a portion of the timber lands in our several counties. I did that. I returned to Orofino, and at a meeting of the

board made a verbal report of what had transpired at this meeting in Coeur d'Alene, including that part of the report wherein we would urge the commissioners to take some action to cruise at least a portion of the timber lands in the counties. Thereafter, I think about the 24th of February, there was a contract let by the commissioners of Clearwater county to Mr. M. G. Nease, of Portland, to cruise three townships of timber lands in Clearwater county, or an area equal to three townships, the land to be designated by the board of commissioners. There was an action commenced by I think Mr. John Lewis against this proceeding, and thereafter on April 15th, I think the date is, or thereabouts, the action taken by the board in entering into the first contract was cancelled, with the consent of Mr. Nease, who was present, and another contract was entered into with Mr. Nease to cruise all the timber lands in Clearwater county, with this provision, however, that the board reserved the right at any time during the progress of this cruise to withdraw any lands they saw fit and not have them cruised. I think there was an action commenced against this proceeding also, in the way of an appeal from the action of the board in entering into the contract. However, the cruise progressed, and by the time I was compelled to turn over the roll to the auditor I had secured reports covering an area of something about three townships, I think, that had been cruised. And I placed those lands on the roll under the cruise, so to speak, that is, I figured the valuation of those lands according to

the cruise. And when Mr. Nease's contract was completed the board made a very thorough examination of the whole affair before they finally passed, or took final action in paying Mr. Nease. During the progress of this cruise, Mr. Gorman, whom I had previously employed to check the lumber yard at Elk River, during the month of January, I think in 1914, was employed to check the Nease cruise, which he did by going out in different parts of the county and checking the work of the several men who were employed by Mr. Nease as cruisers. Those reports he turned in to my office and I myself in conjunction usually with the chairman of the board, Mr. Zelenka, because he was a resident of Orofino, but when any of the other members were present, they also took part—compared Mr. Gorman's reports with the reports sent in by Mr. Nease.

Those reports when finally submitted by Mr. Gorman complete, in the shape of ten books, numbered from one to ten, and verified by him, were by myself taken down to the office of the clerk of the board of commissioners, and placed in the vault, and I specifically called the attention of the clerk of the board, the deputy auditor, Mr. Shreve, as to what the contents of that parcel was; that it contained Mr. Gorman's report of his check on the cruise of Mr. Nease's men. I never took those reports or have had them over to the Fidelity State Bank. In fact I have not seen them since. The cruise tended to raise the valuation of the timber lands very largely. I might say approximately—although I had positive data on only

an area of three townships—that the valuation of the timber lands was increased that year somewhere about three million dollars. As an illustration the Clearwater Timber Company paid on its holdings in Clearwater county in 1914, approximately \$21,000.00 more taxes than it had ever had before on the same property. The Potlatch Lumber Company paid approximately \$16,000.00 more than it had ever paid on the same property before, and other timber companies in the same proportion.

The timber companies appeared before the State Board of Equalization of that year and asked for a reduction and they got a reduction on the valuation of the land upon which the timber stood but not on the timber. I remember very distinctly the statement I made to the board of county commissioners on February 24th relative to the letting of the contract. I do not recall just exactly the words I used but after having waited, it seemed to me a very reasonable time for Mr. Portfors to submit a bid, which he finally refused to do, I felt it was time that I commence my work for the assessment of that year, and I was urging the board to take some action; if they were going to take any action, to take it at once so that I would have some of the data that year that I might use in determining the valuation of this timber land. Prior the only method we had of making an assessment was a blanket valuation. The Northern Pacific Railroad Company had brought suit against the assessor and the tax collector to restrain the collection of taxes based on that kind of an as-

assessment and we lost the suit, and that was one of the points, as I understood it, on which the case went off. The levy in Clearwater county for the year of 1914 was increased very slightly over what it was in 1913. In checking up the plats for the work to be done by Nease, we discovered that there were some of the lands indicated on the county plats which were somewhat indefinite. For instance in the year of 1914, there were somewhere near 8600 acres of land that had not before that appeared on the assessment roll and which had gone to patent, and appeared on the assessment roll that year under what is known as scrip lands. Some of those scrip lands were not correctly indicated on our plats and here and there in different townships were isolated tracts of forty and eighty acres, and sometimes 120 acres, and discussing it with Mr. Nease, we decided to go down and take it up with the board. We did and it was understood and agreed verbally between Mr. Nease and the board that those isolated tracts would be by him, or his men, cruised; provided their appearance was that there was merchantable timber on the land, which after it became taxable within a short time would be of value.

Quite a good many lands were withdrawn from the cruise after the contract was made. I do not recall the descriptions but there were lands in the vicinity of Teakean and Cavendish and Gilbert, Fraser and along the brakes of the Clearwater, some lands along the brakes of Orofino Creek and some along the brakes of Fourth Creek, lands which in a manner

were timber lands, but the value of which could be determined approximately by the assessor without a cruise. The lands which Mr. Nease was cruising were designated in this way to him: The lands were designated on plats which were made from the county plats and turned over to Mr. Nease. I worked on that a good deal myself in consultation with the board and I think I did most of the clerical work for the board.

I am familiar with the character of the lands around Weippe. The village of Weippe is located on one end of Weippe prairie which is an irregular piece of prairie land and which varies in width from about a mile and a quarter to a lesser width. I don't know just how long it is. There are timber lands on I think nearly every section there. I don't know but there is timber on every section. Some lands have been homesteaded and there are clearings and openings on portions of them.

On cross examination the witness Blake testified as follows:

Mr. Nease's cruise of the southeast quarter of section 15, township 35-4, upon which most of the town of Weippe is located, was of value to the assessor in showing whether or not there was any merchantable timber and I think it took in any agricultural land there and the area of it. Simply finding the amount of timber wasn't the only object of the cruise. The report which Nease made on section 23, reports timber on the 80 acres only and that is of value to the assessor in determining the amount of

merchantable timber there is on this land, the area of agricultural land, improved or otherwise, and other data necessary to fix the valuation of the property. I could not now state whether or not I ever saw the copy marked Exhibit 24. I mailed some such plat as that to Mr. Nease. I do not now recall just where I got those blue prints. Referring to the words on Exhibit 24, "Weierhauser Power Site," I couldn't state positively whether those lands are owned by the Weierhauser people. My understanding is that the lands along the North Fork of the Clearwater River in that township and known as Power Sites are withdrawn by the government from entry of any kind. It is evident that the lands that are marked out on that map were not to be cruised by Mr. Nease. If he sent in a plat I probably marked those out.

I have seen Defendants' Exhibit No. 39 before. It was part of the county records of the assessor's office while I was assessor. I couldn't say whether the designation thereon "Power Site" of the lands north of the Clearwater River in section 29 and section 30 were so designated, at the time I selected the lands for Mr. Nease to cruise. Because the words "Power Site" seemed to have been written in with a different hand from some of the other work, I don't recognize the hand writing. It might be Mr. Malloy's hand writing but I don't know. He was my deputy part of the time during Nease's cruise. At the time Mr. Nease turned in his reports showing he had cruised state and government lands in this township,

I checked up the land he had cruised. I don't think I computed the amount of state and government lands he cruised. I have no recollection having done so. I gave Mr. Nease no instructions regarding lands belonging to the state or the United States, or any lands that were not taxable, without consulting the board of county commissioners. I have heard the testimony of Mr. Zelenka to the effect that this matter was left practically in my hands. It was in a manner; that is in consultation with the board.

The lands that Mr. Nease was not to cruise in the different townships was indicated by marking the patches. I couldn't say positively whether Mr. Torgerson, Mr. Zelenka or Mr. Harrison marked any of those plats. The blue prints were marked from the plats I think. If I had prepared the plat of township 38-3, Defendants' Exhibit 20, I should have marked off on the blue prints sent to Mr. Nease, the lands which the records in my office show were not subject to acquisition under the federal law, but there were a great many lands that were subject to acquisition, at least so we thought, and it was deemed advisable to have the cruise because of the fact they might be acquired by examination and go on the tax roll. He cruised lands that had not already been entered. There is no question about that, and he cruised some state lands to my knowledge on which no certificate of purchase had been issued. The contract was verbally modified so as to include other than patented lands to the extent I have stated. I never have figured up what that amounted to or what it cost the

county to get the assessments on the unpatented lands. I never figured up the number of forty acre tracts Mr. Nease charged for on which he reported no timber.

I first met Mr. Nease at Coeur d'Alene, Idaho, at the January meeting of the assessors. I don't recall writing any letters prior to February 24th, 1914, about this contract. I have recently had some conversation with the deputy clerk of the county commissioners, regarding reports of Mr. Gorman. This was on last Saturday. I went into his office and asked him if defendant's counsel had secured a certified copy of Mr. Gorman's report of 1914 and he said not. He said defendant's counsel had secured a copy of his report made in 1912. I told him that I had been instructed by Mr. Tannahill to get a certified copy of Mr. Gorman's complete report. I didn't make any search in the vault for the reports nor did I ask Mr. Shreve or Mr. Kauffman if they had ever seen them there.

I recall there were some discrepancies shown in checking up Mr. Gorman's reports with Mr. Nease's work. I took no action with reference to them that I remember of. I made no change in Mr. Nease's estimates on account of Mr. Gorman that I remember of. I didn't consider that I had any authority to make any changes in Mr. Nease's work. Mr. Gorman was employed to check the work done by Mr. Nease's men, to compare it and to determine whether or not Nease's men were doing the work properly, getting all the timber there was in other words. I found they were doing proper work in most instances.

There were some of Mr. Nease's men, two or three of them whose work was not satisfactory. I didn't do anything about it. I think Mr. Nease let them out. I didn't ask him to make a recruise on that land. I think that was arranged between the checker for Mr. Nease and Mr. Gorman. I think Mr. Young, one of Nease's cruisers, was let out and the land cruised by him afterwards cruised. My understanding that Mr. Young was discharged is hearsay. The understanding that some of the government and state lands should be cruised was in the spring; I don't recall the date but I think it was after the second contract was signed. The first contract called for a cruise of an area equivalent to three townships. I don't know how much of this was done when the second contract was let. I read the papers in the Lewis suit at the time it was filed. I do not think I had Mr. Gorman check up with Mr. Nease's work before the second contract was let. One of the reasons for the entering into the second contract was to increase the area. The board after fuller consideration decided if they had only a portion of the timber lands cruised, particularly in view of the Northern Pacific suit, which I think was then pending, they would be liable to get into some litigation, by reason of the fact that a portion only of the timber lands would be cruised and put on the roll under the cruised valuations, and the other timber owners would probably object as they would be either getting the best or worst of it and have reasonable grounds for commencing an action against the county for unjust discrimination.

I made no investigation into the charges contained in the complaint in the Lewis suit. I made no recommendation of any kind to the board with reference to the letting of the contract to Mr. Nease. I felt satisfied that Mr. Nease was a person duly qualified and was competent to do the work and I may have so stated to the board. I did prefer him in my recommendations to the board over any other cruiser or bidder. The request in writing which I made for a cruise to the board of county commissioners was made before the second contract was let. Mr. Beckett and Mr. Nease came up before the second contract was let and the contract and request for cruise and the minutes of the board were all drawn up while I was present. I think my request for a cruise was prepared on April 15th at Orofino, Idaho. I do not know whether I prepared the paper myself or not. I do not know when and where the proposal to Mr. Nease dated April 15th, 1914, was prepared.

On re-direct examination the witness Blake testified as follows:

I remember Mr. Zelenka insisted that there should be inserted in the second contract a clause against subletting and a clause permitting the county to withdraw lands at any time before they were cruised. Mr. John Malloy was not a deputy assessor in my office during all the time the cruise was being done. His duties while he was my deputy were nearly all the time in the field. While the checking was being done by me and Mr. Zelenka and Mr. Gorman, he was out in the field nearly all the time, prior to the

closing of the roll which is on the fourth Monday in June. I preferred letting the contract to Mr. Nease because he had better recommendations than any other bidder that had anything in the shape of a bid before the board. These recommendations carried some weight with me coming from men who knew something about Mr. Nease's reliability and ability.

There was nothing wrong about awarding this contract to Mr. Nease that I know of. I didn't receive one cent consideration by reason of awarding that contract nor did anyone else to my knowledge.

On re-cross examination the witness Blake testified as follows:

I think Mr. Zelenka's insistence upon a clause against subletting had reference to the first contract.

(Witness excused.)

The court thereupon took a recess until 9:30 A. M., May 13th, 1916.

Upon reconvening of court at 9:30 A. M., Saturday, May 13th, 1916, C. M. CONRY, was produced as a witness for plaintiff in rebuttal, being first duly sworn, testified as follows:

I live at Portland, Oregon, where I have resided fourteen years. I am a timber cruiser and have been engaged in the business constantly for ten years, principally in the states of Oregon, Washington and Idaho. I worked for people who were in the business of buying and selling timber and cruising timber for various purposes. I have cruised for John H. Hawk principally and his father and two brothers, who were owners of large holdings of timber lands in the

states of Oregon and Washington. I have also cruised for G. F. Sandborn whose office is in the city of Chicago and who owns extensive timber holdings on the Pacific Coast. I have also worked for the Hammond Lumber Company, the Southern Pacific Railroad Company and a great many individual claim owners. My method of cruising depends upon conditions. I do in some instances what we call zig zagging a forty. A great many cruisers send their compassmen in on a straight line while I do it on a 45 degree; that is to say if I start in on the south line, I go into the forty one tally north and a tally east. Then I run directly east three tallies, thence three more tallies north, thence three tallies west right into the next forty and do likewise. In doing that I take a strip of two rods on each side of me and when I get through I will have cruised two acres of the whole forty. That would be neither a single run or double run. It is what you call a zigzag. On a double run you go right through on a section line. A tally is one-fourth the distance across a forty. That is 20 rods. We take 125 steps as a rule to the tally. Some may take one or two more steps more or less. I generally estimate a circle acre in the center of a forty and if there are burns or openings I take an account of them and have the compassman run them out and mark them up on his field notes and if something in the condition of the timber strikes my attention I might go off a few tallies and take up a circle acre; it might be lighter or heavier and I do that to get an average on the whole stand. By offset is meant going

off to the side of the course and estimating a circular acre. I never estimate a square acre. I confine myself to that way because I become more proficient that way. When I think it is necessary because the timber is lighter or heavier in one spot I go off in there and take a sample acre. You have to do that if you are going to arrive at accurate conclusions. All cruisers do not use the same method. A fair, normal per cent of variation between the results of the work of two competent cruisers on the same forty acres of timber ought not to be very much but there can arise what you might call abnormal conditions; these might be brought on by burns. The compassman might make a wrong estimate of the amount of the burn within the particular forty acre tract but there ought not to be any great amount of difference. There might be twenty-five, thirty-five or forty per cent in some particular isolated tract. Some difference may be caused by difference in the work of the compassman. One compassman may overrun the forty line somewhat and the other may underrun it somewhat. This is the inability of the compassman to actually step off the distance and this is one of the causes of the variations in the work of the cruisers. A good compassman might step within fifteen steps of the line; one might step right on the line and another man might go fifteen steps beyond. If a compassman keeps within a half a tally to 75 or 80 paces it is within reason but we might jack up the compassman who would continue to do that kind of work. The only way that measurements are taken

are by the compassman's pacing unless we are otherwise instructed. The compassman can check himself up on the section line but inside the section line there is nothing by which he can check himself. I cruised for Mr. Nease in Clearwater county in the fall. I was paid for 48 days. I received no instructions whatever as to whether I was to single run or double run my work. I used three different methods, but I principally single run it. In single running I took a two rod strip on each side of me and frequently stopped wherever the ground conditions would justify it. I stopped whenever there was a burn, a meadow or clearing and I would stop my compassman and have him go and look it over and do whatever it was necessary to arrive at what there was on that forty. Where the land was rough and hilly or the timber didn't run uniform I would go out for a tally or whatever was necessary to arrive at accurate conclusions. I always took an estimate of a circle acre whenever I stopped. Generally in places I stopped I took a circle acre and jotted down the number of trees I found in the circle acre. The reason I single run most of my ground was that I can get over more ground single running it and give just as good results in my judgment as I can under any other method. There is a vast difference between timber in Clearwater county and that on the Cascade slopes. There is not so much brush here as there is in Clatsop and Tillamook counties or Oregon but there is more than on the east slope of the Cascade Mountains. I can cover a great deal more ground in cer-

tain parts of Clearwater county than I could in Clatsop and Tilamook or Clackamas counties, Oregon. I double run in Clearwater county wherever I thought it was necessary. In my judgment the work I did was an honest, fair and accurate estimate upon the lands I cruised.

On cross examination the witness Conry testified as follows:

On one day when I was cruising for Mr. Nease I zigzagged a full section. I might have done it often-er but I have a distinct recollection of one day. Some days I worked as much as a day and a quarter. I was out some days and I would come in after dark an hour or an hour and a half. It may be I was only paid for 46 days. I cruised something over twenty thousand acres in that time. That is a greater average than in the work I have done for other people. I have covered three-quarters of a section for other people and double run it but that would not be anything like an average. There would be other times I could only get a quarter section or 200 acres, depending on conditions. What I mean by taking a circle acre is that I take a circle or a radius of 117 feet and count the trees in it. I cruised in township 40-4 east. I remember my report on section 2 in that township. The changes shown thereon, where the figures in lead pencil have been changed by other figures being written in above, were not on the report to my knowledge when I turned it in. I remember that the little North Fork of the Clearwater River runs through that section. All of the section on

one side of the stream is burned and I did not cross the river onto the burn. I could see it all from the other side of the river, and I reported on it by forties. The elevations were shown twice on each forty line by my compassman because the instructions called for them. We were not instructed to do that so as to show a double run. We had no other instructions except the written instructions in evidence. The figures "15" written above the figures "35" in the white pine column opposite the northeast quarter of the northeast quarter on the report on section 3, township 40-4 east are not my figures nor any of the interlined figures on that report are mine.

Referring to report on section 3, township 40-4 east, none of the changes which are shown there by the interlined figures were made by me. That is a long section and I included in my estimate of the north tier of forties the timber in the lots adjoining each 40 acre tract, respectively; and the changes that are made appear to be an apportionment of my estimate between the 40-acre tracts and the lots.

I think I used the zigzag method in cruising sections 7, 8, 9 and 10 in that township. The compassman had instructions to take elevations while I was zigzagging. He did not take elevations at all tops of ridges and beds of streams. It was impossible to comply exactly with instructions in that regard. I complied with instructions as much as I considered necessary to get results. I kept all soil classifications myself. The character of soil most all appear for themselves; if not, one can kick up the soil with

his heels sufficient to see what it is. I do that frequently and whenever I think it is necessary, when I am going out of one kind of soil into another. I do not carry any pick or shovel, and I never had any education in geology or minerology.

On re-direct examination the witness Conry testified as follows:

I can cover much more ground in cruising in the Clearwater country than I can in the timber west of the Cascade Mountains.

(Witness excused.)

A. HAMER, called by the plaintiff as a witness in rebuttal, being first duly sworn, testified as follows:

I live in Seattle, Washington, and my business is timber cruising. I am now in the employ of the United States government in the Agricultural Department. I have been in the business of cruising since 1888; have practiced it in the Middle States, in the South and in Idaho, Washington, Oregon, California, British Columbia and Alaska, and I have been cruising on the Pacific Coast since 1900. I worked in the Idaho timber principally for myself from 1899 until 1906. My method of cruising is this: When I go into a tract of timber and in my judgment I think it should be covered thoroughly, I cover it thoroughly, and if I think it is a uniform stand I, probably, single run it. My method is to have no one system. If the strip system won't do I will use the acreage system, and in using the acreage system I will use the circle acre or the circle one-third of an acre or the square acre, according to the

change in timber and conditions, where I can see the country surrounding it. I would not just estimate according to the actual count that I make on a certain strip, but my estimate would be according to my judgment. If I get a little more on a strip and a little less on an acre outside of the strip I make an allowance for that. Ordinarily when I single run I can see four rods on each side of me, which makes four acres in a forty acre tract, and I may on that forty, besides that strip, count three acres or five acres or two acres. If I count four acres in the strip and four acres outside of the strip I will add them together and divide by two. That gives me an average not only of the strip but also outside of the strip. Whenever such a cruise, in my estimation, is necessary, it is done. I have covered a good lot of the United States in timbered countries and I find that to compare one locality with another, as far as the amount of ground covered is concerned, is absolutely of no value, and no timber man would consider it as of value.

The United States government gives us instructions to double run, single run, horseshoe a section or go once through a section. They have certain rules, but in the rule it is stated that all the rules are flexible, not entirely so, but it is left to the judgment of the man in the field to determine whether the land should be cruised as double run or single run or by horseshoeing a section, or by going once through a section. By horseshoeing a section is meant running on forty lines. The cruiser starts on

the south side of the section and goes four tallies east; he then runs north on that forty line three-quarters of a mile and then he runs east a half a mile and then back south three-quarters of a mile to the section line, and checks on the other section corner. The United States government does not require that all lands that we cruise should be double run. It is left to the man in the field. They recognize single running as a proper method. I do not know what my average acreage was when I was cruising in Clearwater county. I know in one township that I ran three miles and back in a day. In single running that would be a section and a half, but I did not single run three miles and back. Part of it I single ran and part of it I double ran. I varied my system. Whenever I got into a piece of timber that I thought was necessary to double run I double ran, and if the timber changed so that I thought I could make a fair estimate by single running I single ran. I would vary my system on an individual forty, or even on an individual half forty if, in my judgment it was necessary. There was one day that I only covered one hundred twenty acres. The reason why I would cover more in some days than other days was that some days I had level ground, practically no brush and open timber and I could travel along nearly the same as one could along a road. In other instances I would have steep hills at the top and I would come right back to a creek where it was all brush. At other times the compassman has a hard time to keep in line, because he can't see far enough in the brush to take more than about

twenty paces to a set up. In the open timber where I would apply the single run system, lots of times the compassman would get a sight one hundred paces at a tally. That, in my judgment, explains the difference in time that it takes to cover different tracts of land. In my judgment, twenty-five or even thirty-five per cent would be a normal percentage of variation between the estimates of two competent cruisers on the same forty acre tract. A difference of from thirty to forty-five per cent would be considered a good cruise. Variations in excess of that sometimes occur. This excessive variation may arise from the fact that the two men do not go in the same direction.

The customary method of gauging distances used by compassmen in cruising is by pacing. The compassman determines when he gets to the back line of a forty acre tract inside the section by his pacing. Compassmen vary a good deal in their pacing. When a compassman comes to the last forty lines that he has to establish he has gone three-quarters of a mile from the section line. In going a quarter of a mile the discrepancy will not be as much as it would be at the end of three-quarters of a mile. The farther the compassman gets from his starting point the more the discrepancy would be; so that there would be likely to be a larger discrepancy between the south half of the north half of a section if the compassman started from the south side, than there would be on the south half of the south half.

A cruiser has to estimate defective timber by observing the ground that the timber grows on, the

outward appearance of the trees, such as conchs, dead limbs, dry spots on the trees, where they are dry on one side up quite a distance, the effects of fire, if there has been a fire. The cruiser finds not only whole trees that are defective, but individual trees that are partially defective and partially good. There is a certain class of timber in Clearwater county that is of no value as timber if there is any conchs on it to any extent, because inside the bark the rot would run from top to butt and still the timber would be green, and to a man that is not familiar with it it would look good, while a man of experienec could tell there was nothing in the tree. In estimating the timber the cruiser must not only determine how much timber there is but what of it is merchantable and what not, and in doing that the cruiser must bring to bear upon it the best judgment that he has. There are no rules by which to determine it. The accessibility of timber is one of the factors that goes to determine its merchantability, also its distance to transportation and the facility and cost of logging and the density of the timber on the ground. It would be possible to have thoroughly sound trees upon a section of land and still the timber would not be merchantable, because of its thinness on the ground, and in such a case, whether the timber is thin enough to make it unmerchantable would depend to a certain extent on the amount of timber in the immediate vicinity and the cost of taking it to the place of manufacture.

While I was cruising for Mr. Nease in Clearwater county I had no instructions as to what land I was to double run and what to single run. I was not told by anybody to single run any of it nor to double run any of it; nor did I follow anybody's instructions in determining what I should double run and what I should single run. I followed my own judgment in that. In doing my cruising for Mr. Nease in Clearwater county I made a fair, accurate and an honest estimate of the timber on the land to the best of my knowledge.

On cross examination the witness Hamer testified as follows:

Mr. McKay gave me no instructions other than the written instructions. I never figured up the amount of acres I cruised for Mr. Nease in Clearwater county, nor the cost. The first compassman I had on the Nease job was Buck Phillips. I heard that he was paid \$3.50 a day. I had the written instructions, which were shown as Exhibit 16 attached to the answer in this case, in mind when I was doing the work, especially the clause with regard to my work being subject to a check. I could undertake work on those instructions notwithstanding the fact that the work of cruisers varies from fifteen to thirty-five per cent, because my understanding with Mr. Nease was that there was to be no checker to check my work that was not a thorough timber man and cruiser. I will invite and always did invite a thoroughly competent man to check my work. If in cruising I come upon, for example, two hundred thousand

feet of tamarack in the center of a section that was otherwise burned over so that the timber was isolated from the rest of the timber in the vicinity, I might eliminate it entirely as merchantable timber, according to the surrounding logging conditions. If in my judgment it was not of any marketable value as timber I might not mention it at all. There might have been some forties where there was scattered timber in a burn where I might have reported it all as a burn, without saying anything about the small amount of timber on it. When I found some sound timber on land which, because of its location or isolation or for other reasons, I did not think was commercially of any value, I considered it to a certain extent. I would probably say that there was some, but not to any extent. I do not know whether anyone checked my work.

The object of the cruising I am now doing for the government is to get state land out of a forest reserve, sections 16 and 36, and exchange them for other government land in a forest reserve in blocks instead of isolated sections. I believe the approximate value of this exchange is between seven and eight million dollars. I have never cruised any timber for the government where it was to be sold. I did not use the horseshoe method of cruising under the Nease contract. If I was using the horseshoe method in cruising a section I would establish a point, for example the southwest corner of the section; I would run east four tallies and run north three-quarters of a mile; then run east half a mile and then run

back south three-quarters of a mile and go over and out on the southeast corner. In doing that I would go off into the other forties that were not on the land that I was following, at various times.

In my cruising in Clearwater county I used the strip and acreage system more than any other system. My compassman did not take the elevations. I did it. I did not personally go to all the points where the elevations are indicated. The elevations on the plats do not indicate the points at which I actually read the barometer. They indicate the elevation as near as I could judge from any point where it was taken by me. If I was on a level piece of land, when I come to the forty line I can tell the distance. Any cruiser that knows anything about cruising can tell the distance of a tally very close. I can tell if I can see that far. If I could not see that far I would step out there and look at the ground. In judging his distances a man's judgment is very much more accurate than the absolute reading of the aneroid, and it is so recognized by the people that use it.

On re-direct examination the witness Hamer testified:

I explain the single run and strip system of cruising that I use, as follows:

If I were cruising a forty acres I would start, for example, on the south line of the forty two tallies east of the southwest corner of the section; that brings me to the center of the forty east and west on the south line. At this point my compassman runs a straight line north; as he runs north he calls

his tallies and at every tally he waits for me until I come. I count the number of trees and carry a celluloid pad with columns on it and on each column or head of each column is written a letter to indicate whether it is fir, tamarack, spruce, cedar, pine or other variety. When I get to the end of the second tally I go out to either side and satisfy myself that I have got a fair average of the ground as far as I have gone and if, in my estimation, the balance of the ground would be impossible to get a good fair estimate by single running I would go out into the timber. Then I come up to third tally and so on. There are three tallies north and two east. I go out a tally here and there and count an acre here and there, which, besides my strip, give, in my judgment, a fair average estimate of the forty.

When I got orders to come down from the North Fork I came down to headquarters and from there to Pierce City. On the trip we were going through some second growth timber and I made the remark to Mr. McKay, and I think Mr. Randolph and Mr. Olinger heard me say it, that if a man would double run this kind of timber he would steal. McKay asked me what I thought of that country and I said it was a pudding. I said if a man had worked on the coast he would cover a section of this anyway. McKay asked me if I thought a man could single run that country and give a fair estimate of that kind of timber and I told him yes.

When I was camped at Cook's mill McKay came through there. He was going to Elk River and he

said he thought it would be a good thing if we could get through in that country before snow came, and I agreed with him. The time that I went over three miles and back and about which I have before testified, I did not cruise nine hundred sixty acres that day, but six hundred acres. It was medium timber, open and level ground and very little brush.

On re-cross examination the witness Hamer testified as follows:

I said on my direct examination that I had covered a section and a half in one day, but it was not in the particular instance about which I have last testified.

On re-direct examination the witness Hamer testified as follows:

The section and a half that I covered in one day had a lot of brush and scattered timber and it was along the side of a hill and I could look all over it and count every tree from the top of the hill.

(Witness excused.)

LESTER CLARK, called as a witness on behalf of plaintiff in rebuttal, being first duly sworn, testified as follows:

I live in Portland, Oregon. I am a timber cruiser; have been in that business for the last ten years in Oregon, Washington and Idaho. I was employed by Mr. Nease on his cruise in Clearwater county. I had never done any cruising in Idaho before that time. I had cruised in Oregon and Washington. I cruised on the Nease cruise in both the spring and fall. I used both methods, double running and single running. I was never given any orders or instructions

by anyone what lands I was to single run and what to double run. I was not instructed at any time to do nothing but single running. In the spring the country being new to me I double run the greater part of the work I did. In the fall, when I became more familiar with the country and where the country was open and good going I single run a great deal of that work. Some of it, however, where the country was rough and there was a good stand of timber I double run. In my judgment there was no necessity for double running any of the land which I single run, in order to give a fair, honest estimate of the timber. If there had been any question about it in my mind I should have double run it.

My system of single running is practically the system of every man who is in the business. It is to run through the center of the forty, offsetting as occasion seems to require, counting a strip through the center of the forty; counting round acres in order to get a general, fair average of the timber standing on that particular forty. The things that occasion me to make offsets are patches of brush, where it is impossible to determine to my own satisfaction as to the general stand of timber, burns and patches of exceptionally light or exceptionally heavy stand of timber. When in a forty acre tract I would meet with clearings, openings, marshes or things of that kind, I would have my compassman stop and either he or I would run out to that particular place, run a line out there, or if it was close to hand we oftentimes would not run a line—and go out there and

determine the amount of the opening. My object in making offsets where I found the timber was not running uniform, was to get another count on the timber in order to arrive at a more fair estimate as to the general stand of timber on that particular forty. The work that I did for Mr. Nease in Clearwater county was the result of my best judgment and a fair, honest estimate of the timber on the land.

On cross examination the witness Clark testified as follows:

I have no idea how many acres I averaged per day in the spring nor in the fall. Some days I would do a whole lot of work and other days we would be short. I believe that one or two days I did three-quarters of a section. I have done that with a double run too. I cruised some state lands up in township 38-3. There were a few small patches of forty acres or eighty acres that laid in with the patented lands that we had to run across, and we might as well pick it up while we were going across it. If I remember rightly, Mr. Nease told me that where there were such small patches lying interspersed with patented lands we might as well pick it up if we had to go across it. He did not say for what purpose he wanted these estimates and I did not know whether he was reporting these lands to the county.

On re-direct examination the witness Clark testified as follows:

I am not sure whether these lands that I mentioned on my cross examination as state lands, belonged to the State of Idaho or the United States govern-

ment. I presume I did know at that time, but I don't know now. I don't know whether those public lands were lands of the United States or the State of Idaho, but they were public lands of some kind.

On re-cross examination the witness Clark testified as follows:

As I remember it, I was to estimate these public lands in case I had to go across them anyway.

(Witness excused.)

GEORGE PENEGOR, called as a witness for the plaintiff in rebuttal, being first duly sworn, testified as follows:

I am a timber cruiser and have worked at it for thirty or thirty-five years in Michigan, Wisconsin, Minnesota, Montana, Oregon, Washington, Idaho, California and British Columbia. I worked for Mr. Nease in cruising the lands in Clearwater county in 1914. I did not work in the spring but in the fall only. I had cruised timber in Idaho before that time, about sixteen years ago, and I had done some work in Clearwater county. I single run most of my work for Mr. Nease. I determined whether I would single run or double run a piece of land by the lay of the country and the way it looked to me. If the timber was uniform I would single run it and if it was not uniform I would double run it. I had no orders whatever as to whether I should single run or double run. I had only the written instructions. Nobody at any time told me to use anything other than my own judgment in determining what should be single run and what double run. I don't think it was nec-

essary in order for me to obtain a fair average estimate, to double run any of the land which I in fact single run. I made a fair, honest estimate according to my best judgment of the amount of timber on the land that I cruised.

My method of single running is this: As a rule I would start in on the corner and go in two tallies, and then continue through the section. I would start in say two tallies from the corner and go north clean through the section, providing I had the whole section to cruise, and if I would see any openings or any stand of heavier timber than was on my line I would offset and pick those up by the round acre system. In going through a forty by this system I could cover as many acres as I liked. If I took a round acre at the end of every tally I would cover six acres, taking a two rod strip on the run, that is, two rods on each side of me. I had no rule as to the number of offsets which I took. I took such offsets as the character and lack of uniformity in the timber, led me to believe necessary. I would use more offsets in one forty than in another. Sometimes I would not offset at all, and then again I would offset three or four or maybe six times in a forty. The difference in conditions is what would lead me to make more offsets in one forty than in another.

On cross examination the witness Penegor testified as follows:

I don't know what my actual time in cruising was. I lost a day in going in and one in coming out, and two days for moving. I don't know the average

amount of ground I cruised per day. If I was actually cruising thirty-six days and cruised 15,869 acres, that would not be as much as I have done when cruising for commercial purposes, when the timber was to be bought and sold. The amount I can cruise depends upon the lay of the country and its accessibility. I made out a report on the east half of the west half of section 22, township 41-1 east. I did not draw the line appearing on the plat and marked "C. O. Line". Those words are not in my handwriting. Referring to my report on this ground, it shows that I found 480,000 white pine on the northeast quarter of the northwest quarter. Referring to the northeast quarter of the northwest quarter of section 15 in that township, I know of no reason why the 16,000 feet of white pine as shown by my report should be scratched off, and not reported in the estimate of the timber in the section, if such is the fact. I did not estimate the narrow strip on the east half of the west half of the west half of this section, nor of section 22. My figures for the northeast quarter of the northwest quarter, the southeast quarter of the northwest quarter, the northeast quarter of the southwest quarter and the southeast quarter of the southwest quarter cover forty acres in each case and do not include the narrow strip along the west side of these forties. I put on the elevations on my plat of section 23 in that township. The topography work and the elevation work was done by my compassman. I had nothing to do with it. We could put in elevations twice on the south

line of the forty and twice on the north line, although we went through the forty but once, because I do not think there was any time but what we were either on a point or close, so that we could see from where we were about the exact elevation. There are some places I think where we did not put on the elevations at two points. I do not know any reason why we did not always follow the instructions in that regard. No one ever verbally instructed me to put in my elevations so as to show a double run. I do not know any particular reason why we indicated two elevations on the forty line when we were only single running. We can judge that distance, as a rule, very correctly. Some of the figures on the topography report on section 34, township 41-2 are not mine. The figures 4600 in lead pencil stricken out and 4400 in pencil written in, and a 4400 in pencil stricken out in red and 4250 in red written above, I explain that in this way: This was the first cruise I worked on, and the weather was very changeable when I went in there and the aneroid was not working right and my elevations were too high all over, on account of the aneroid. When the weather changed we found out from the change of the weather and from different parties that we were too high all through. We worked all round that land afterwards. I think there were other sections that I cruised where my elevations were off. I do not know when and where the changes in the elevations as marked on the plat, were made; and this applies to section 33 also and section 32. None of those changes are mine. They

were all done under the same conditions and I think that applies also to section 31; in fact in nearly all of that township. I have seen my aneroid change 750 feet in two days lying on a table, not moving it at all. I do not recall how many days it took me to do these sections. It rained part of the time. I started too high in the first place and continued so until I found out different. I lowered it afterwards, but I could not tell you the exact place. The changes in elevations of my reports on sections 31, 32, 33, 34 and 35, in township 41-2 east are not made by me. It may have been reported in a letter. I remember distinctly where I made a note of it, either to Mr. McKay, or told him verbally that they were too high. I think the blue pencil line running through my report on section 28, township 41-2, is my work, but I could not swear to it. The black heavy lines indicate ridges. In the north half they do not seem to be indicated on the report to the county. The changes in my figures representing the percentage of clear timber on section 36, township 41-1 east, from ten to sixty, was not made by me; nor the change from eight to fifty in the south half of the section. The figures 8 and 10 represent the percentage of surface clear tamarack that I found on that section when I examined it. I know of no reason why they should have been changed. The percentage of clear has a bearing upon the value of the timber.

On re-direct examination the witness Penegor testified as follows:

On my cross examination I was shown the report of section 15, township 41-1 east. Upon now looking at this I find that I did not cruise that section. It was cruised by Johnston. The changes of the percentages and the amount of clear tamarack on section 36, township 41-1 east, show quite plainly on the sheet, so that anybody can see them. My judgment may differ from some other.

(Witness excused.)

J. E. CROMAN, called as a witness in behalf of plaintiff in rebuttal, being first duly sworn, testified as follows:

I live in Portland, Oregon; my business is that of timber estimator and lumberman. I am at present in the employ of J. D. Lacey & Company of Portland. I have been in the business of cruising for, approximately, eleven years, and I had nine years' experience in logging. I have cruised in Wisconsin, California, Oregon, Washington and Canada.

I was employed by Mr. Nease cruising in Clearwater county and did work only in the fall of 1914. I was given no instructions as to what lands I was to cruise by double run and what by single run or how I was to cruise it. I discussed that with Mr. Nease and he told me to try and keep within fifteen to twenty per cent of what fair minded men would put on the forty, and, of course, closer than that if possible. That was all the instructions we had. I cannot say that I single run any of it. The way they single run here is not my system. I work on acreage more. I get twelve and a half, ten and fifteen per cent off

the forty, and that I discover gives the best results. So I got twelve and a half to fifteen, and as high as twenty-five per cent on some of the forties up here, actually cruised. I would start in, for example, at the southwest corner of a forty acres and glance over the timber and see where appears to be the most, or whether it is uniform, and step in one, two or three tallies and I offset from time to time, taking thirty-one paces on each side, and get at least twelve and a half per cent of the forty actually cruised. I look over the whole forty but I only actually cruise about twelve and a half per cent of it. It gives a very good average. I have never known of more than twenty per cent discrepancy between the result of my cruise and the results of actual logging. I double run some of the work which I did for Mr. Nease. I did the work as thoroughly as I could.

On cross examination the witness Croman testified as follows:

Some of the work that I have done for the Laceys I have done in the same way that I did the work for Mr. Nease, and then other work that I have done for Laceys I have gone through the forties twelve, sixteen and eight times. I have just come from cruising work which I am doing eight times to a forty, but that costs forty cents an acre. That is the most accurate way of cruising that is known. You cannot arrive at as accurate, complete and thorough an estimate of the timber on the forty by going through it once, as you can by going through it eight times. The cruising that I am doing for Lacey &

Company is in Chehalis county, Washington. I cruised in the neighborhood of seventeen thousand acres in Clearwater county for Mr. Nease and I might have averaged about three hundred eighty-six acres a day, but a great deal of it was logged and burned, and I did not do that much where it was heaviest. Where the lands were logged off I just gleaned over them. I reported the logged off lands. I did not have any particular instructions in regard to cruising logged off lands. They gave me the map and I was supposed to cover those lands the same as the rest I supposed. I did not take the topography; the compassman did that. His name was DeShields. He made up the topographic map.

I believe the instructions to the men were to show the elevations twice on each forty line so that they could connect up their contours; that was the way it was explained to them. I heard that. We show a great many more elevations than that. We had instructions to put in the elevations at all tops of ridges and all streams that were followed, to the best of my knowledge. I do not find such elevations on any of these reports. I do not know that these elevations are of any value, further than to give a very perfunctory idea of the land. Information of the elevations at the tops of ridges and at the streams would be more important to a logger, than at the section corners. A logger always goes over the land himself before he logs it. I never try to log by any topography map. The figures 450 in the last margin in pencil in my report on the southeast quarter of the

southwest quarter of section 1, township 41-1 east, and the figures 100 written above my figures of two hundred thousand in the white fir column, are not my figures. I do not know anything about them. This is also true of the interlineation on section 3. I did not cruise the little strip between the east half of the west half and the west half of the west half of that section. I do not remember anything about that strip; I do not believe we cruised it. The general remarks on this section are in my handwriting. I did not strike out any part of it. What is stricken out there with the pen was not done by me. The notation "Damaged by fire some time ago" was not put on by me. I do not know whether any of my work was checked.

(Witness excused.)

JOHN MILLER, called as a witness for plaintiff in rebuttal, being first duly sworn, testified as follows:

I live in Portland, Oregon, which has been my residence for the last 25 years. I am a logger and timber cruiser. I have followed the business of timber cruising continuously for the last eight years in Oregon, Washington, British Columbia, California and Idaho. I worked for M. G. Nease cruising in Clearwater county in 1914. That is the first work I had ever done in Idaho. I cruised sections 27 and 34 in township five—five east.

My attention is directed to my report on section 27. My legend on that report is as follows:

"White pine of a fair quality but small, ten per

cent rotten, stump and conch rot." That means where the timber shows to be rotten at the stump, and conch rot is rot that is a fungus growth showing on the timber, and by that we have determined that it is conch rot. "White fir small and rough, and thirty per cent rotten. Red fir small and rough, but sound. Tamarack of a fair quality. Yellow pine fair quality, sound and fairly smooth. Cedar small but sound. Cedar poles of a good quality, but small. Logging conditions, steep, hard ground to log on, as it is very broken and brushy and considerable down timber. The north part of this section cannot be logged at a profit. A small part along the north side might be logged out with section twenty-two. That portion will cost ten dollars per thousand feet. Distance to outlet, rail or stream, do not know. Work done on the 12th and 13th day of October, 1914."

My legend on my report on section 34 in that township is as follows:

"Character of timber, yellow pine, good fair quality. All the rest of the timber is small and rough. Logging conditions, the very hardest kind of ground to log on, steep and broken, and a thick growth of brush and a lot of down timber on the ground. Distance to outlet, for logging purposes, to railroad or stream, do not know the distance." The further descriptions that I have on the topography side of that sheet is as follows:

"Damage by fire and otherwise, the fire has been all over this section. Probabilities of fire, heavy fire risk, as there is a heavy undergrowth all over this

section, and a lot of dry brush and down and dead timber, and it lays up high and is very broken, being full of ridges and canyons, and if fire should get started in it it would make it very dangerous for adjoining timber, as it would be impossible to stop it without having to burn up. The timber on this section is practically worthless, as it is small and rough. There is some timber on almost every forty-acre tract on the section, but not enough to amount to anything. Principally tamarack and red fir, and a very few small cedar poles."

What I say in that report is correct. I have gained experience in judging of the merchantability of standing timber in logging and cruising for over twenty-five years. My system of cruising which I used in cruising timber in Clearwater county was as follows: I ran through the timber and counted the trees on a strip four rods wide on each side of me. I counted each kind of timber separately, the number of trees, and I averaged the size of the trees where the ground was timbered. I double run it principally. I think I double run eighty per cent of the timbered area that I cruised. I have used the zig-zag system quite frequently. The zig-zag system is simply a double run cruise where a man cruises a forty-acre tract without leaving the forty and going into an adjoining forty. No one gave me any instructions as to what of the land in Clearwater county I was to double run and single run. The estimate I made was a fair honest estimate to the best of my judgment of the timber I cruised.

On cross examination the witness Miller testified as follows:

My estimate of the timber on section 27, township 35-5 east does not include the defective and rotten timber. That is to say, in making up the estimate I deducted from the amount of timber that I actually found a percentage for rotten and defective timber. In making up my estimate I also took into consideration the value and the location. That is to say, if I found some green timber which I concluded was of no value because of its location, isolation or some other reason, I would report that there was timber on the ground but not sufficient to turn in as an estimate because it was worthless. I would not cruise it. It would have been possible for me to make a report that would have shown the actual quantity of the timber and the conditions and quality in such a way that the assessor could have judged of its value for taxation purposes. I did not do that because I was supposed to use my own judgment in regard to it. My instructions were to do the work in the same way I had been used to doing it where I had worked for other people. Mr. Nease told me to double run wherever it was necessary to do so. My compassman was Lon McKindlass who is now in British Columbia. The elevation 3350, about one tally east of the northwest corner of section 21 in township 36-5 east, was taken by the compassman standing about one tally or 20 rods from that point. He did not note the elevation at the point where he stood instead of it at the point where it was actually noted because the in-

structions were that the elevations should be as near as possible on the forty lines. We generally showed two elevations on each forty line. We did that because I think that was the instructions to the compassman. I did not have any instructions in regard to elevations except the written instructions. The reason I put in the elevations in the way I did on that section 21 was that Mr. Nease told me at Pierce City to do my cruising the same as I had been used to doing it for other people I had worked for and I went out in the woods to do the work the same as I had been doing it; and I had been putting the elevations on the first and third tally as I went through a forty in most of my work for other people. In most of my work for other people I double run each forty. When I got this letter of instructions I took it and put it into my plat case, gave the compassman his letter showing him how they wanted the topography made and I went out in the woods and instructed him to put the elevations on the first and third tally as I had been used to doing. I did not then read Mr. Nease's instructions, and I did not read them for about three weeks. I did not read them simply because I did not think there was any need of it. I thought that when he told me to go out in the woods and do the work according to the best of my ability according to my custom that that was all that was necessary. When Mr. Nease gave me the instructions I signed them without reading them and asked him what they were. He said that it was a letter of instructions governing my work and that he was giving

them to me in order to protect himself so that the men would go on the ground and cover it. He told me that a man was required to be within twenty per cent of the checker in his estimate. I do not know what checker. He did not mention whether it was the county checker or his own checker. I told him I would not work under those conditions unless I knew that the man that checked after me was a competent man to do the work and I would not stand for a check on individual forties; that the checker would have to do at least ten per cent of the work to come within a reasonable check on my work. Mr. Nease then told me to go ahead and do the work, because a man of my experience did not need to anticipate any trouble whatever from anybody. The amount that I might vary in my estimates on an individual forty from the checker's estimates would depend upon where I would start and where the checker would start, and how much green timber and burned timber there would be on the forty. I have varied 100 per cent from other men and I have been as close as two and three and five per cent.

I made some reports on the distance to outlet, rail or stream, as required by the instructions. The report on that point on sections 17, 18, 19, 20, 21, 22 and 23, in township 36-5 east, is not made by me because I did not know the distance. I think I worked about 80 days in the fall. I do not know how many of those days it took me to move camp. Probably ten days. I do not know how many acres I cruised. It may have been 26,000.

The witness was excused.

C. S. SNYDER, called as a witness for plaintiff in rebuttal, being first duly sworn, testified as follows:

I live in Portland, Oregon. My occupation is working in the woods and timber business. I cruised for Mr. Nease in Clearwater county a little in the spring, but most of my cruising was in the fall. I double run everything that I cruised in the fall. On the greater part of the land that I cruised there were considerable openings and the timber was more or less in patches and in order to single run it and satisfy myself that I was making a thorough cruise the work would be about the same as to double run it and so I preferred to double run. I double run everything that had timber on it.

On cross examination the witness Snyder testified as follows:

I did no independent cruising in Clearwater county in the spring of 1914 any more than when I was running the compass. I cruised occasionally with the cruiser. I have had only two seasons' experience in cruising. Prior to the time I had began cruising for Mr. Nease in Clearwater county I never cruised any or signed any report. I had cruised with cruisers on different pieces of land but I never signed any reports until I went to work for Mr. Nease. Prior to that time when I was cruising with cruisers and running the compass, sometimes we would change off. I would cruise a forty or so and the cruiser would run the compass for me. I never received cruiser's wages prior to this Clearwater coun-

ty job except in Latah county, Idaho, the same spring.

The witness was excused.

CHARLES R. HART, called as a witness for plaintiff in rebuttal, being first duly sworn, testified as follows:

I live in Portland, Oregon, and am a timber cruiser and have been for about 25 years. I have cruised over all the Northwest and in the State of Idaho off and on for the last 15 years. I worked for Mr. Nease in cruising Clearwater county in 1914. I worked only in the fall. I double run about 90 per cent of my work. I was not instructed by anybody to single run any of my work.

On cross examination the witness Hart testified as follows:

I cruised more some days than others. Some days I did as much as three-quarters of a section and some days a little bit more than that. My estimate on the south half of the south half of section 13, township 37-3 is as follows: "Upon the southwest quarter of the southwest quarter 15,000 white pine, 10,000 white fir, 100,000 red fir; and the southeast quarter of the southwest quarter, 15,000 white pine, 150,000 red fir; the southwest of the southeast quarter, 30,000 red fir, and the southeast of the southeast, 40,000 red fir. I carefully double run all of those forties. I compared my estimates with Mr. Murray's on the same land at Mr. Nease's office in Portland and found some difference. On the forty where I found 30,000 red fir, Mr. Murray had no red fir, but had white pine and white fir. This discrepancy may be explained by

the fact that I found some 5,000 ties and he did not show any ties at all. I did not estimate any ties out of white fir or white pine.

The witness was excused.

BERNARD KELLEY, called as a witness for plaintiff in rebuttal, being first duly sworn, testified as follows:

I live at Portland, Oregon. I am a timber cruiser and have been engaged in that business constantly ever since 1905. I have worked in Michigan, Oregon, Washington, California, Canada and Idaho. I worked for Mr. Nease in cruising Clearwater county in 1914 but only in the fall. I had no instructions from any one that I ought to single run. I double run some but I single run most of it.

On cross examination the witness Kelley testified as follows:

I do not know how many acres I cruised in a day while I was single running. I do not remember what was the largest acreage covered by me in any one day.

The witness was excused.

L. W. OLINGER, called as a witness for plaintiff in rebuttal, being first duly sworn, testified as follows:

I live at Oregon City, Oregon. I have been in the timber business since 1905. I have had experience in cruising. I cruised for Mr. Nease on his contracts in Clackamas and Clatsop counties, Oregon, and in Latah and Clearwater counties, Idaho. I worked for him both spring and fall in his cruising of Clearwater county. I had no instructions from any one

as to whether I was to single run or double run my work. In the spring I double run quite a large portion of my work as I was not then thoroughly familiar with the timber in this country. In the fall, however, most of my work was a single run. The character of the timber and the ground was generally what determined my action in deciding whether to double run or single run. No one gave me any orders to single run or double run any of it.

On cross examination the witness Olinger testified as follows:

While I was cruising in the spring and double running there was a man by the name of Gaffney watching me. I did not double run everything while he was watching me. I single run quite a portion of burnt lands. I single run some green timber while he was watching me in the northern part of township 39-6. My brother who was running the compass for me had cut his foot and Gaffney ran the compass for me until he went out. He was in the employ of the timber companies as I understand. He ran the compass for me as a matter of accommodation. I single ran the east half of section six in township 39-6 east. The double row of figures on the report of topography on that section showing elevations through the forties were put there to give a more concise idea of the country. I put an elevation in the center of the forty and also figures on both sides showing the relative elevations of twenty rods to each side. I had no instructions with regard to the placing of these figures on those portions except that in Clatsop county we used

this same system. I asked Mr. Nease if we should place our elevations the same as we had in that county and he said it would be better as it would give a better idea of the condition of the surface. Mr. Nease did not tell me to put in elevations to show a double run.

On re-direct examination the witness Olinger testified as follows:

I do not think there would have been any occasion for my placing two elevations on the forty line for the purpose of falsely indicating that I had made a double run when there was a spotter in the field seeing that I was actually single running. On one occasion Mr. Gaffney asked me if I was going to double run or single run and I said I was not positive and he said "If you double run that I won't go with you. It is simply a waste of time." Mr. Portfors brought him to my camp and said that the timber companies wanted Mr. Gaffney to go with us and see if we were doing the work properly.

On re-cross examination the witness Olinger testified as follows:

I think Mr. Gaffney is now dead.

W. H. JOHNSON, being called as a witness for plaintiff in rebuttal, testified as follows:

I reside in Portland, Oregon. My business is that of timber cruising. I have been in the timber business practically all my life. The last twelve years I have devoted my whole time to cruising in Michigan, Wisconsin, Oregon, Washington, California and British Columbia. I never had cruised any timber

in Idaho before I went to work for Mr. Nease on his Clearwater county job, but I had cruised country of a like nature in the State of Washington adjoining the State of Idaho. In cruising for Mr. Nease in Clearwater county I double run everything that I considered necessary. I single ran some of it. The conditions of the ground and the stand of timber determine me in deciding whether I would single run or double run. I was given no order or direction by any one that I should single run or double run any particular part. That matter was left to my own judgment and discretion.

On cross examination the witness Johnson testified as follows:

During the time I was working for Mr. Nease I lost about three days for moving and bad weather. I do not know how much land I covered nor what I averaged per day nor what was the largest day's work I did.

I should think that I double run about 75 per cent of what I cruised. I think on an average I could cruise in a day and double run it three-fourths of a section of such lands as I cruised in Clearwater county and arrive at an accurate complete thorough estimate and some days I could do a section and double run it.

I count the trees on the strip which I take and occasionally measure up some of them and when it was necessary I offset. As a general rule it is not necessary to offset a great deal when you are double running.

Witness excused.

F. J. LODS, called as a witness for plaintiff in rebuttal, being first duly sworn, testified as follows:

I worked as a compassman for Mr. Nease in cruising the lands in Clearwater county in the late summer and fall of 1914. I worked with R. E. Slattery as cruiser. He is now in Phelps, Wisconsin, and has been there over a year.

F. B. BENNISON, called as a witness for plaintiff in rebuttal, being first duly sworn, testified as follows:

My business is that of timber cruising. My experience in that business extends over 25 years in the states of Minnesota, Wisconsin, Oregon, Washington, California and British Columbia. I worked for Mr. Nease in his cruise of Clearwater county in the spring of 1914, but not in the fall. I double run all my work. I had not cruised in Idaho before that time.

On cross examination the witness Bennison testified as follows:

Mr. Gorman and Mr. Murray both checked my work. Some of the checking done by Mr. Murray was not done in my absence but with me.

The witness was excused.

HARRY B. BECKETT, being sworn as a witness for plaintiff in rebuttal, testified as follows:

I am an attorney at law and was engaged in the practice of my profession in the year 1914. My office is in the Board of Trade Building, Portland, Oregon. I was attorney for Mr. M. G. Nease in 1914. I acted as the attorney for Mr. Nease in the case

of the appeal by John Lewis from the action of the board of county commissioners of Clearwater county in entering into the contract with Mr. Nease dated April 15, 1914, and also in the first suit brought by Lewis, which was an injunction suit, involving the first contract. Mr. Nease was at all times desirous of getting the appeal by John Lewis heard and determined by the court. Mr. Tannahill was the attorney who represented the board of county commissioners in that case. Owing to the fact that that suit was pending and the work was going on, and money was being expended by Mr. Nease in carrying out his contract, we were at all times anxious to get the suit brought to trial. I had considerable correspondence with Mr. Tannahill in regard to it. Mr. Nease and I as his attorney were not seeking to keep that case alive upon the docket without a trial but were seeking to bring it to an issue and trial, to get it determined. We wanted to know as quickly as we could where we stood.

GEORGE W. TANNAHILL, sworn as a witness for plaintiff in rebuttal, testified as follows:

I am a practicing attorney of the State of Idaho, with an office at Lewiston. I remember about the two suits growing out of the letting of the contract for cruising Clearwater county brought by John Lewis, one being an injunction suit and the other an action of an appeal from the board of county commissioners. I represented the board of county commissioners in each of those suits. There was no effort on the part of any of the defendants in those

suits to my knowledge to keep them on the docket undetermined. The defendants were at all times trying to get to a trial. The letter addressed by Edgar C. Steele to Honorable James E. Babb, dated July 6, 1914, was mailed to me by Judge Steele. It is marked a copy but it is signed by him. I don't know that Mr. Babb ever told me directly that he had received this letter but he consulted me within a few days concerning the matters referred to in the letter and I assume that he received the letter.

Said letter was thereupon offered by the plaintiff and received in evidence and marked Plaintiff's Exhibit Number 29.

On cross examination the witness testified as follows:

I had no correspondence with Mr. Babb after the date of the letter marked Plaintiff's Exhibit 29, because Mr. Babb and I both had offices at Lewiston. I consulted Mr. Babb shortly after I received that letter and he stated that he was not ready to go to trial. I was acting for Clearwater county and the individual defendants, except Mr. Nease. I was in no way employed by Mr. Nease. When I was urging that the case be heard I was doing this at the suggestion of the county commissioners and on my own behalf. The county commissioners expressed themselves as being anxious to get it determined and I was likewise. I knew from the correspondence I had with Mr. Nease and the talks I had with him and the correspondence I had with his attorney that he was anxious to get the case tried. The county commis-

sioners said they wanted the matter determined. They did not want to have it dragged along.

The witness was excused.

ED. RANDOLPH, being recalled by plaintiff in rebuttal, testified as follows:

I was out in the woods with Mr. Wherry and Mr. Swanson when they were doing some of their check cruising. That was on the fourth of May, 1916. I was out there half a day. I went out with them. We started about half past seven or eight in the morning and got back about noon. They cruised 200 acres in that time. We went about a mile out from town to the land. They stopped cruising between eleven and half past eleven I should judge. I suggested the night before that I would go out with them the next morning. We all compared estimates as we went over each forty. All three of us. I stated what I had and they stated what they had. At the end of the cruising of each forty each of us knew what the other man's figures were on the pine. I was just cruising the pine.

On cross examination the witness Randolph testified as follows:

Upon coming back from cruising with Wherry and Swanson I told Mr. Becker, one of the counsel for the defendants, that they were doing good work. My figures and Mr. Swanson's were very close. They measured a good many trees. They were continually doing it. There were no precautions to my knowledge that they might have taken to arrive at an accurate result that they did not take. Neither of them chang-

ed his figures after comparing with the others. My figures were very close to those of Mr. Wherry's. The character of the timber that they were cruising when I saw them was some of it young growth and some of it old growth fully matured. They went through each forty twice.

On re-direct examination the witness Randolph testified as follows:

I considered that Mr. Swanson and Mr. Wherry were doing good careful work. They were double running it and they did 200 acres in four hours. In estimating the pine I took all trees with twelve-inch butts or more. I think they did the same.

W. M. DOCKERY, a witness on behalf of the plaintiff in surrebuttal, being duly sworn testified as follows:

I have been in the business of timber cruising for about 15 years, eleven years of which was spent on the Pacific Coast. I am now in the employ of the Interior Department of the Government of the United States. I have been employed by the government to cruise timber in the State of Oregon. I worked for M. G. Nease in the spring and summer of 1914 in cruising in Clearwater county. I worked only a part of the time that the work was going on. A part of the country that I cruised was rough, quite rough, and a good deal of it was very level. I was given no instructions to double run any of it or to single run any of it. Unless a cruiser has definite instructions to the contrary he uses his own judgment as to what he should single run and what he should double run.

The work I did for Mr. Nease was of the same character and quality as I have done for other people and I have always tried to do good careful work. I was given no instructions while working for Mr. Nease to hurry the work so as to slight the quality of the work I was doing. None of my work was done in such a hurried manner as to detract at all from the quality of it. The number of acres a cruiser can cruise in Clearwater county per day depends upon how many hours he works, the character of the particular tract he is cruising and upon the man himself. Some cruisers can cruise more in a day than others. There are some parts of that country where a man can cruise eight to twelve forties a day. In doing my cruising I follow the written instructions. I consider that the work I did there was a good and fair estimate of the timber upon the lands that I cruised and that the other information contained in my reports was correct. I had cruised in that country about eleven years ago.

On cross examination the witness Dockery testified as follows:

I began my work some time in the summer of 1914. I cruised in township 37-4 and in 37-2, and I cruised the north twelve sections of township 40-6.

It was thereupon admitted by the respective parties that the witness while cruising for Nease in Clearwater county cruised 22,439.66 acres.

Continuing, the witness testified:

I did no work during the spring or in the summer. I think any part of the lands that I cruised could be carefully cruised at the rate of 330 acres per day.

I double run a part of the work, but I could not say how much. I double run wherever I thought it was necessary. I was not instructed to place the elevations at two points on each forty line for the purpose of showing a double run. In my cruising for commercial purposes I generally double run. The number of acres I can cruise double running them for commercial purposes depends entirely upon conditions. I cruised some in Idaho for the C. A. Smith Lumber Company, but I can't remember how many acres I averaged per day cruising for them. All of that was single run cruising. Mr. Nease paid me \$6.50 a day, but this did not include the time going and coming from the work. The western slope of the Cascade mountains is a much more heavily timbered country than that in Idaho and the Idaho timber is smaller and generally shorter than that on the coast. There is more necessity of making double runs in cruising in the heavily timbered country than there is in the lighter timbered country. There is as much timber on one acre on the coast as there is on some of the forty-acre tracts in Idaho. The cruising which I did for the C. A. Smith Lumber Company was for commercial purposes.

M. G. NEASE, recalled for plaintiff in rebuttal, testified as follows:

I was present in the court room during the testimony given by the witness Roy Wherry. I heard his statement to the effect in substance that I had at some time asked him to cruise some government land because I wanted to scrip it. I never at any time made any such statement to him in substance or otherwise.

I have never scripped any land in Idaho. I also heard Mr. Wherry's statement to the effect that I had asked him to cruise a certain amount of public land because I thought that I could get by with that much. I never gave him any such instructions or made any such statement to him. There was no reason why I should ask him to do that as it was no secret whatever about the fact that I was cruising some government land. One of the cruisers which I had employed on the Clearwater county job was named E. I. Weerd. I do not know where he is now. He has been absent from Portland for a long time. The last time I heard from him he was in either Wisconsin or Michigan. I also had a cruiser on that job by the name of Archie Young. I do not know where he is. I have been unable to locate him. I have made inquiries a good many times, but no one in Portland seems to know what has become of him. He has been absent from Portland for about a year. There was also a man on that job by the name of Tuttle. He went back to Chillicothe, Missouri, where his family lived. I also had a man on that job by the name of McCombs. He was a cruiser. I think he is somewhere in the south part of this county. I saw him the other day and asked him to come and testify. I also had a man employed on that job by the name of Albright. He is in Portland, Oregon, or was on last Saturday or Sunday. I tried very hard to get him to come here. I offered to pay him his expenses and \$5.00 a day. He said he did not want to come. I do not remember of any other cruisers that I had on the job, except

those that I have just mentioned and those that are in attendance here upon the court. I heard Mr. Randolph's testimony to the effect that I had told him to double run in the spring. I do not remember giving him any such instructions; and if I had done it I think I would have remembered it. I did not give any of the men instructions specifically to double run or single run. I told them to use their own judgment—to get the timber. I never told Mr. Randolph that I wanted four forties in section seven, township 36-4, or any other land, cruised for my own use. I had no use for having any lands cruised on my own account. I was not intending to purchase any lands in Clearwater county and never have purchased any lands there, and do not now own any lands there and never did. I heard the witness Wherry testify that I told him to cruise the north half of the southwest quarter of a certain section in township 38-6, which was state lands. I have no recollection of giving him any such instructions. I gave him no instructions to cruise any lands that I knew to be state lands. I heard Mr. Wherry's testimony in regard to a conversation between him and myself in the Bollinger Hotel in Lewiston about the south half of the north half of section fifteen, 38-6 east, wherein he says that I asked him if he had the figures on that tract of land or the estimates on it. I do not remember any such conversation. I never at any time intimated or requested him to fill in any figures on any lands that he had not estimated and cruised and I made no such request of any other person whatever. It would be

unreasonable for me to expect honest work from a man and then ask him to do a dishonest thing. I heard Mr. Wherry's testimony to the effect that he had marked the elevations on his topography for the purpose of indicating the land had been double run when in fact it had only been single run. I gave him no such instructions. There was no reason why I should. My contract did not require a double run or any sort of a run. There was never any attempt to conceal the fact that my cruisers were single running a portion of the lands that they were cruising.

I heard the testimony of the witness Albright to the effect that I told him to write in something in regard to logging conditions on some of the reports at Portland, and I also heard other testimony given here in regard to changes made in the legend of the cruisers upon their reports when the same were transcribed upon the reports filed with the county. We revised the language in most of our reports that came in, abbreviating in some cases, extending in others. For instance, in the case of distance to outlet, that is, a stream or railroad, the cruiser frequently has no way of knowing just how far it is. It is easier for us to fill that in from our having the map of the whole territory, easier than for the cruiser to fill it in, having nothing but the township plat; and in various ways the write-up, as we call it, is revised. None of this was done for the purpose of deceiving or for any improper purpose.

I heard the testimony of the witness Albright to the effect that I had given him directions to tell the

cruiser Weir to single run his work. I never gave Albright any such instructions. I never gave the compassman instructions, except in one case, how the cruiser should do certain things. I either gave my instructions to the cruiser direct or to some man in charge. It would be unheard of to give a compassman, and especially one who had never been in my employ before, instructions to guide the cruiser. I know of no reason why there should have been instructions given to Mr. Weir to single run, and not given to the other men. I cannot tell whether there has been an erasure of the word "State" on the margin of the cruiser's report on section eight, township 38 north, range four east. I made no such erasure. I don't see any sign on the report of anything having been erased.

All of these cruisers' reports which are in court here were submitted to counsel for the defendants for their examination at my office in Portland. I invited them to come long before the trial and help themselves to them. No changes to my knowledge have been made in these reports since they were filed with me and prior to their examination of them that did not appear upon the face of the reports themselves, with one exception. There was one field blank that someone in the office had taken the land classification topography and endeavored to get funny and had drawn something on that. It was erased. I don't know who drew it. No changes have been made in any of these reports to my knowledge since they were examined by defendants' counsel in my office at Port-

land; and the only two people who have had access to them are Mr. Fulton and myself.

On cross examination the witness Nease testified as follows:

Mr. McCombs said that the reason why he did not come to this trial was because it was a political fight in Clearwater county and he begged me not to subpoena him because he did not want to get mixed up in it. Mr. Albright said that his son was up here on some kind of a mission and he did not want to come up and be against him. Mr. McKay, my foreman and checker, is here. I heard the testimony of Fred Bailey as to the manner in which Archie Young cruised sections 24 and 25, in 39, five east. That was not the first time I had heard of that. I first heard it after Mr. Young had quit his job. That was before the cruising was completed. I did not send any one back there to check up Mr. Young's work because after my conversation with Mr. Young and talking to Mr. Murray and Mr. Young's compassman I did not deem it at all necessary.

Thereupon the plaintiff rested its rebuttal.

JOHN R. BECKER, being called as a witness on behalf of the defendants in surrebuttal, testified as follows:

I examined in Mr. Nease's office at Portland, Mr. Wherry's field report on section eight, township 38-6. This was about two weeks ago. That report when I examined it in Mr. Nease's office bore a notation in the left margin in lead pencil to the effect that the northwest of the southwest was state land. Now that

notation is hardly visible to the naked eye; in fact it is not noticeable without a glass. I have examined it under a glass and it clearly appears.

JOHN SWANSON, being called as a witness for the defendants in surrebuttal, testified as follows:

When Mr. Wherry and myself were doing the check cruising for Clearwater county this spring we cruised six forties on most of the days that we were out. We would go out about half past seven in the morning and come in all the way from two to five in the afternoon. Mr. Randolph was with us on the last day. We saved that piece out for the last day because it was about a half mile from town.

On cross examination the witness Swanson testified as follows:

We cruised five forties on that last day. We started out from town about half past seven. It would take us about fifteen or twenty minutes to get to the land. We got through about 11:30 A. M. and got back to the hotel in time for dinner. During that time we cruised these five forty acres and double run them.

On re-direct examination the witness Swanson testified as follows:

I recall the meeting of the board of county commissioners in Clearwater county on February 24, 1914. I believe I asked Mr. Zelenka about what we would have to do to prepare a bid and asked him if he had any specifications to furnish and he said no that the bidders were supposed to furnish those and I believe he also objected to me and Mr. Portfors putting in a

bid for the reason that we had worked for the Clearwater Timber Company.

The defendants by their counsel then offered and there was received in evidence Defendants' Exhibit Number 40, which is a statement certified by the state board of land commissioners of Idaho showing such of the state lands cruised by Nease as had been purchased by private parties under contract prior to January 1, 1915.

Defendants by their counsel then offered and there was received in evidence Defendants' Exhibit Number 41, the same being copies certified by the clerk of the board of county commissioners of Clearwater county of all expense accounts and bills filed by J. F. Gorman for his work in checking Clearwater county.

Thereupon the evidence was closed.

*In the District Court of the United States for the
District of Idaho, Central Division.*

DEXTER HORTON TRUST AND SAVINGS
BANK, a corporation, Plaintiff,
vs.

THE COUNTY OF CLEARWATER of the State of
Idaho, and OREN D. CROCKETT, as treasurer
of said county, Defendants.

No. 639.

ORDER APPROVING STATEMENT OF THE
EVIDENCE ON APPEAL.

The foregoing is a true, complete and properly prepared statement of the substance of all the testimony introduced and admitted upon the trial of the above

entitled cause in the United States District Court for the District of Idaho, Central Division, and, together with the original exhibits therein and herein referred to and hereby made a part of said statement, constitute all of the evidence in substance introduced and admitted in evidence upon said trial essential to the decision of the questions presented by the appeal heretofore petitioned for herein by the plaintiff and allowed from the final judgment in this cause; and the foregoing statement contains all objections and exceptions made and taken to the admission or exclusion of evidence and to all motions and rulings thereon made by said district court at said trial and the said statement is hereby approved.

The exhibits which were introduced and admitted in evidence upon the said trial and which are hereby made a part of this statement are the exhibits filed with the clerk of said district court upon the trial of this cause and marked by him respectively as follows:

(1) Plaintiff's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29.

(2) Defendants' Exhibits Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 20a, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41.

(3) Copy of the minutes of a meeting of the board of county commissioners of the defendant county held on the twenty-first day of March, 1914, attached to the deposition of Charles Portfors.

(4) Copy of the minutes of a meeting of the board of county commissioners of the defendant county held on the twenty-eighth day of March, 1914, attached to the deposition of Charles Portfors.

Dated at Boise, Idaho, this 7th day of March, 1917.

FRANK S. DIETRICH,
Judge.

Filed March 8, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

STIPULATION EXTENDING TIME TO FILE
PRAECIPE.

IT IS STIPULATED by and between the parties hereto, Peters & Powell and Geo. W. Tannahill on the part of the plaintiff, and Fred E. Butler, on the part of the defendants, that the plaintiff may have to and including the 20th day of January, A. D. 1917, in which to prepare and file with the Clerk of the above entitled court its praecipe herein, and the filing of the same within the time provided by the rules therefor is hereby expressly waived.

Dated this 13th day of January, A. D. 1917.

PETERS & POWELL, and
GEO. W. TANNAHILL,
Attorneys for Plaintiff.
FRED E. BUTLER,
Attorney for Defendants.

Endorsed: Filed Jan. 16, 1917.

W. D. McReynolds, Clerk.

By M. W. Griffiths, Deputy